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WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE

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REVIEW OF REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Preparatory Committee the contribution submitted by Ms. Radhika Coomaraswamy (Sri Lanka), Special Rapporteur of the Commission on Human Rights on violence against women, on the subject of race, gender and violence against women.

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I. GENERAL INTRODUCTION; BACKGROUND AND CONCEPTUAL ASPECTS OF INTERSECTIONALITY

A. General introduction

1. The present report is submitted in accordance with Commission on Human Rights resolution 2000/14 and General Assembly resolution 54/154, in which the special rapporteurs were invited to participate actively in the preparatory process with a view to ensuring the success of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

2. Gender-based discrimination intersects with discriminations based on other forms of "otherness", such as race, ethnicity, religion and economic status, thus forcing the majority of the world's women into situations of double or triple marginalization. The combined effects of racism and gender discrimination on migrant, immigrant, indigenous, minority and marginalized women, in particular, around the world has had devastating consequences for their full enjoyment of equality and fundamental human rights in both the public and private spheres. Because discrimination based on ethnicity, race, religion, etc. is imbedded in State and social structures, such discrimination decreases the rights and remedies available to women and increases women's vulnerability to violence and abuse.

3. For instance, victims of domestic violence who belong to marginalized ethnic or racial groups confront additional obstacles to escaping violence in addition to the physical and psychological harm that affects all battered women (which makes it difficult to break the "cycle" of violence). Battered women of colour may face language barriers or cultural insensitivity. In the United States, for example, the legal requirement that women who come to the country through their United States citizen husbands hold "conditional" status for two years, prevents many immigrant women from seeking redress. The failure of many countries to recognize gender-based violence as grounds for asylum also has an adverse impact on immigrant women.

4. Owing to the lingering effects of apartheid and colonialism in South Africa, there is a reportedly high incidence there of sexual violence by white male farmers against black female farm workers who work on their land. This pattern of violence against women, many of whom come from neighbouring African countries and have migrant status, replicates the gender and racial dynamics and violence that characterized apartheid. Violence is also used to target women perceived as being part of an economically elite ethnic minority. During a period of civil unrest in Indonesia in 1998, hundreds of ethnic Chinese women were specifically targeted for rape and sexual torture. Rigid caste systems, as in India, render Dalit ("untouchable") women particularly vulnerable to sexual violence and abuse.[1]

5. Indigenous women or women from racially or ethnically marginalized groups may fear State authority, if the police have traditionally used coercive and violent means of criminal enforcement in their communities. Furthermore, those who seek relief from the State for gender-related violence committed by male members of their racial, ethnic, religious and indigenous communities often face pressure not to report violence owing to the fear of greater group stigmatization.[2]

6. Community members may invoke customary and religious practices to justify violence directed towards women.[3] This has important gender and race implications because such justifications tend to (mis)appropriate arguments regarding Western cultural imperialism. Those seeking to justify gender-related violence may accuse challengers of imposing Western cultural norms upon their own distinct cultures. For example, opposition to so-called "honour killings" in Jordan or to female circumcision in parts of Africa and the African diaspora are characterized as being led by "Western" feminists. In addition to minimizing violence against women, such appeals to the communities' shared racial, national, cultural or religious identity can serve to rationalize non-interference by the State.

7. Moreover, intersectional subordination by its very nature is often obscured both because it tends to happen to those who are marginalized even within subordinate groups and because existing paradigms do not consistently anticipate the discrimination. This lack of visibility depends on several factors, such as cultural barriers, precarious legal status and sometimes the impossibility for these women to claim their rights, hence preventing them from denouncing these abuses and defending themselves.[4] Black, ethnic minority and migrant women tend to be invisible in society, in terms of their representation, their contribution and recognition of their needs. Their economic and cultural contribution to the host society is often undervalued because it is in fact not visible to large parts of society. Stereotypes of women coming from minority groups are at the same time a cause and a consequence of this lack of visibility: often they are not seen as skilled individuals who might employ their capacities for the benefit of the whole society.

8. This report attempts to consider the various ways that the lives of some women, particularly migrant, indigenous, immigrant, minority and marginalized women, around the world are shaped, constrained and sometimes lost by the nexus between gender, race, colour or ethnicity and other axes of subordination.

9. Within the overall fight against racism, targeted and specific measures for women are also needed. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance will focus on action-oriented and practical steps to eradicate racism, including measures of prevention, education, protection and the provision of effective remedies. In that context, this paper will suggest some remedies and measures to eradicate racism and racial discrimination, and its specific effects on women and girls at the national, regional and international levels.

B. Background

10. Gender refers to the socially constructed roles of women and men ascribed to them on the basis of their sex. Gender roles depend therefore on a particular socio-economic, political and cultural context, and are affected by other factors, including race, ethnicity, class, sex orientation and age. Gender roles are learned and vary widely within and between cultures.[5]

11. Historically, gender and other forms of discrimination, including racial discrimination, have been considered in parallel. However, interlinked and mutually reinforcing trends, including recommendations of United Nations conferences and summits, have increased the demand for a more comprehensive analysis of the dynamics of discrimination against women,

including the intersection of the various different forms of such discrimination. The Fourth World Conference on Women provided the context for increased perception that various types of discrimination may affect women and men differently.[6] The Beijing Platform for Action,[7] adopted at that Conference, drew attention to the fact that factors such as age, disability, socio-economic position or belonging to a particular ethnic or racial group could compound discrimination on the basis of sex and create multiple barriers for women's empowerment and advancement. It also made clear that gender discrimination may be intensified and facilitated by these and other factors, and that without explicit recognition and focused monitoring of the different life experiences of women and men in private and public life, other forms of discrimination could escape detection and, therefore, appropriate remedy.[8]

12. The combined effects of racial and gender discrimination on the advancement of women and their achievement of equality with men have attracted increasing attention, particularly in the implementation of the critical areas of concern of the Beijing Platform for Action, and in relation to substantive issues such as migration, including violence against women migrant workers and trafficking in women and girls. The "outcome document" of the special session of the General Assembly on Beijing+5 demanded that Governments take measures to address racism and racially motivated violence against women and girls and support programmes of non-governmental organizations which address all forms of violence against women and girls, including that which is race or ethnic-based.[9]

13. This development has provided the opportunity for recognition of the multiple discrimination experienced by women, including that resulting from gender and racial discrimination. In particular, the statutes of the Ad Hoc Criminal Tribunals, as well as that of the International Criminal Court[10] implicitly recognize the impact of the intersection of gender and racial discrimination. Notably, the International Tribunal for Rwanda[11] has concluded that rape and sexual assault committed with the specific intent of destroying, in whole or in part, a particular group constitutes acts of genocide. In February 2001, the International Criminal Tribunal for the Former Yugoslavia, holding that rape and enslavement constituted crimes against humanity, convicted three Bosnian Serbs for the systematic rape and enslavement of Muslim women during the Bosnian war.

14. The Security Council has adopted a resolution on the special measures to be taken to protect women and girls from gender-based violence, in particular rape, in situations of armed conflict.[12] The Economic and Social Council's agreed conclusions 1997/2 and preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which will take place in Durban, South Africa, from 31 August to 7 September 2001, have also given greater prominence to the combined effects on women of gender and racial discrimination. The special session of the General Assembly on "Women 2000: gender equality, development and peace for the 21st century" (June 2000) made several recommendations directed at the elimination of racially motivated violence against women and girls. The Commission on the Status of Women also decided to consider the issue of gender and all forms of discrimination, in particular, racism, racial discrimination, xenophobia and related intolerance, at its forty-fifth session in March 2001.[13] Further commitment to consider the gender implications of racial discrimination have been expressed in a number of resolutions by United Nations bodies, particularly in relation to the World Conference against Racism. For example, the General Assembly and the Sub-Commission on

the Promotion and Protection of Human Rights have called for a gender perspective to be taken into account throughout the preparations for and in the outcome of the World Conference.[14]

15. The Committee on the Elimination of Racial Discrimination is demonstrating a growing sensitivity to the way in which gender and race/ethnicity intersect. Although earlier, some Committee members suggested that gender issues did not fall within its mandate, in its concluding observations it has addressed the treatment of foreign women working as domestic servants; maternal health care for particular racial groups; marriage and family laws; nationality laws; impunity for violations of women's human rights; education of girls; exploitation of prostitution; sexual violence, including rape, and deaths of women civilians during armed conflict; and the situation of refugee women and asylum-seekers. The Committee has also, in its concluding comments, demonstrated appreciation of the way in which gender and race/ethnicity intersect.[15] More recent general recommendations adopted by the Committee also reveal a greater appreciation of multiple forms of discrimination. Thus, in its General Recommendation XXVIII on the establishment of an international tribunal to prosecute crimes against humanity, the Committee considered that the jurisdiction of such a tribunal should include rape in certain circumstances, and in General Recommendation XXVII on discrimination against Roma made several recommendations with regard to discrimination against Roma women and girls with respect to education.[16] In March 2000, the Committee adopted General Recommendation XXV on gender-related dimensions of racial discrimination, in which it emphasized that racial discrimination does not always affect women and men equally, or in the same way, and that there are circumstances in which racial discrimination only, or primarily, affects women.[17] At its previous session, the Committee had already adopted an amendment to its reporting procedure, requesting States parties to provide information on the situation of women in the context of racial discrimination.[18] The Committee on the Elimination of Discrimination against Women has begun to integrate such considerations into its review of States parties' reports [19]

16. Gender perspectives are also being integrated into the work of the human rights special procedures, thereby allowing for recognition of the effects of multiple forms of discrimination against women. Country specific mechanisms often provide information on women's enjoyment of human rights in the country in question and some of the thematic mechanisms similarly address this issue. In particular, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Special Rapporteur on violence against women have considered the intersection of gender and racial discrimination in their reports on certain countries. The Special Representative of the Secretary-General on internally displaced persons, the Special Rapporteur on religious intolerance and the Special Rapporteur on freedom of expression have also noted the multiple forms of discrimination against women.[20]

17. Expert and regional seminars held in relation to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance have focused on the effects that racial discrimination can have on women. For example, The Asia-Pacific Seminar of Experts on Migrants and Trafficking in Persons with Particular Reference to Women and Children, held from 5 to 7 September 2000 in Bangkok,[21] emphasized the interaction between gender and racial discrimination. It predicated that some women of certain racial or ethnic groups were subjected to abuses in larger measure than other women, while particular forms of violations, such as trafficking in women and girls, frequently involved racist attitudes and perceptions and were

often directed at certain racial and ethnic groups, indigenous women and migrants. Gender and racial discrimination was the subject of an expert group meeting that was convened by the Division for the Advancement of Women, in collaboration with the Office of the High Commissioner for Human Rights and the United Nations Development Fund for Women in Zagreb in November 2000.[22] The purpose of this meeting was to contribute to further understanding of the issue and provide input into the report of the Secretary-General to the Commission on the Status of Women at its forty-fifth session, as well as to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

18. The contemporary overlap in the respective trajectories of gender and race related human rights activities engages the interaction between race and gender discrimination in at least two important ways. First, as States and NGOs prepare for the forthcoming World Conference, the imperative of gender mainstreaming, which applies broadly across United Nations treaty bodies and institutions, directs specific attention to the need to develop analyses explicitly designed to address the gendered dimensions of racism. Because racial discrimination is often gendered in the sense that women may sometimes experience discrimination and other human rights abuses in a manner that men do not, the mainstreaming mandate directs attention to the ways in which women and men are differently affected by race discrimination and other related intolerance. Not only does mainstreaming gender in the context of examining racism bring race discrimination against women out of the shadows, it also permits a sharper understanding of the particular ways in which gender shapes the discrimination that men face as well.

19. Second, the logic of mainstreaming gender - paying attention to difference in the name of greater inclusion - applies to differences within the category of women as well as to differences between women and men. There is growing recognition that the failure to address the various "differences" that characterize the problems of different groups of women can obscure or deny human rights protection due to all women. Indeed, while it is true that all women are in some way subject to gender-discrimination, it is also true that other factors, relating to women's social identities, such as class, caste, race, colour, ethnicity, religion and national origin, are "differences that make a difference" in the ways in which various groups of women experience discrimination. These factors can create problems and vulnerabilities that are unique to particular groups of women or that disproportionately affect some women relative to others.[23]

> "Just as women's gender-specific vulnerabilities can no longer stand as justifications for denying human rights protections to women more generally, neither should 'differences among women' be allowed to marginalize some women's human rights problems, or to deny them equal solicitude and concern under the prevailing human rights regime."[24]

20. Intersectional discrimination which results in subordination creates consequences for those affected in ways which are different from consequences suffered by those who are subject to one form of discrimination only, be it based on race, gender or some other form of discrimination, such as sexual orientation, age or class. The consequences of intersectional discrimination may remain unaddressed by prevailing human rights approaches because the specific problems or conditions created by intersectional discrimination are often subsumed within one category of discrimination, such as race or gender discrimination.[25]

21. Thus, a problem or condition that disproportionately affects a subset of women may be framed solely as a women's problem. Aspects of the issue that render it an intersectional problem may be absorbed into a gender framework and there may be no attempt to acknowledge the role that some other form of discrimination, such as racism, may have played in contributing to the circumstance. In this context, the full scope of problems that are simultaneously products of various forms of discrimination, such as on the basis of race and gender, escapes effective analysis. Consequently, efforts to remedy the condition or abuse in question are likely to be as incomplete as is the analysis upon which the intervention is grounded.

22. Ensuring that all women will be served by the expanded scope of gender based human rights protection requires attention to the various ways that gender intersects with a range of other identities and the way the intersection contributes to the unique vulnerability of different groups of women.

C. Conceptual aspects of "Intersectionality"

23. The idea of "intersectionality" seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create burdens that flow along these intersecting axes contributing actively to create a dynamic of disempowerment.[26]

24. The "traffic intersection metaphor", created by Professor Kimberlé Crenshaw, gives what is considered to be an effective model for the understanding of intersectional or multiple discrimination.[27] "In this metaphor, race, gender, class and other forms of discrimination or subordination are the roads that structure the social, economic or political terrain. It is through these thoroughfares that dynamics of disempowerment travel. These thoroughfares are sometimes framed as distinctive and mutually exclusive avenues of power." But these thoroughfares often overlap and cross each other, creating complex intersections at which two, three or four of these avenues meet. Marginalized groups of women are located at these intersections by virtue of their specific identities and must negotiate the "traffic" that flows through these intersections to avoid injury and to obtain resources for the normal activities of life. This can be dangerous when the traffic flows simultaneously from many directions. Injuries are sometimes created when the impact from one direction throws victims into the path of oncoming traffic, while on other occasions, injuries occur from simultaneous collisions. These are the contexts in which intersectional injuries occur - when multiple disadvantages or collisions interact to create a distinct and compound dimension of disempowerment.

25. There are different types of intersectional discrimination or subordination. But the failure of national Governments and the international community to analyse adequately all experiences of intersectional discrimination stems from the fact that in traditional conceptions of race and gender discrimination, certain specific problems or forms of discrimination faced by marginalized women are rendered invisible.

26. Crenshaw describes this as the twin problems of "over-inclusion" and "under-inclusion".[28] The term "over-inclusion" is meant to capture the occasion in which a problem or condition that is particularly or disproportionately visited on a subset of women is simply claimed as a women's problem. It is over-included to the extent that the aspects of the circumstance that render it an intersectional problem are absorbed into a gender framework without any attempt to acknowledge the role that racism or some other form of discrimination may have played in contributing to the circumstance. The problem with this over-inclusive approach is that the full scope of problems that are simultaneously products of race and gender subordination escapes effective analysis. Consequently, efforts to remedy the condition or abuse in question are likely to be as anaemic as is the understanding upon which the intervention is grounded. The discourse on the trafficking of women is an example. When one pays attention to which women get trafficked, the immediate link to their racial and social marginalization is obvious. Yet the problem of trafficking is often absorbed into a gender framework without addressing race and other forms of subordination that are at play. For instance, in the recent report on trafficking sponsored by the Commission on the Status of Women, no attention was directed towards the fact that often race or related forms of subordination contribute to the likelihood that some women rather than others will be subject to such abuses.

27. Parallel to the problem of over-inclusion is that of under-inclusion. A gender analysis may be under-inclusive when a subset of women who are subordinated experience a problem, in part because they are women, but it is not seen as a gendered problem because it is not the experience of women from the dominant groups. A more common instance of under-inclusion occurs where there are gender distinctions among men and women within racial or ethnic groups. Often it seems that if a condition or problem is specific to women within a racial or ethnic group, and by its nature unlikely to happen to men, its identification as a problem of race or ethnic subordination is compromised. Here the problem is that the gendered dimension of a problem renders it invisible as a matter of race or ethnicity. The reverse, however, is rarely the case; usually race discrimination that functionally targets men does warrant inclusion in the category of race discrimination even though women may not be equally effected by it. An illustration of under-inclusion might be found in the sterilization of marginalized women all over the world (see below).

28. Three types of intersectional subordination have been distinguished.

29. Targeted discrimination. Intersectional subordination sometimes results from abuses that are specifically targeted at racialized women. This can occur in the context of armed conflict and can be illustrated by recent events in countries and areas such as Bosnia and Herzegovina, Burundi, Colombia, East Timor, Kosovo, Rwanda and Sri Lanka. Here conflicts have been motivated by ethnically based acts of aggression in which women have been targeted and become victims of ethnically-motivated gender-specific forms of violence. In some cases women were deliberately impregnated to dishonour an ethnic group; in other cases women were sexually mutilated to make them incapable of reproduction. Rape and other forms of sexual violence have also been used as an instrument of genocide against particular racial or ethnic groups.

30. Compound discrimination. Women are sometimes subject to discrimination because of their gender roles and because they are members of racial or ethnic groups. For example,

women may be excluded on the basis of race from jobs designated for women; at the same time, they may be excluded from jobs reserved for men. In effect, these women are specifically excluded as minority or ethnic women because there is no role for applicants with their particular ethno-racial and gendered profile. Women affected by compound discrimination may find that there are few avenues of challenge: they must bring claims on the basis of racial discrimination or discrimination on the basis of sex; they cannot challenge the compound discrimination resulting from the intersection of these forms of subordination.

31. Structural discrimination. Structural intersectional subordination occurs where policies intersect with underlying structures of inequality to create a compounded burden for particularly vulnerable women. Women may experience specific forms of gender discrimination where they are vulnerable because of their race/class or ethnicity. On the other hand, marginalized women may be subject to specific forms of racial discrimination simply because of their gendered location within their communities. Thus the racism they experience may affect them in ways which are different from that experienced by men in their communities. One example of this is the ways in which vulnerable women within racialized groups may be coerced into non-violent crime in support of criminal activity by their partners. But their subordinate gender position within their community which brings about their ready acceptance of the coercion into crime is ignored by the State, which may single out the women for harsher sentences. Such women may also be vulnerable to specific forms of gender discrimination in prisons, ranging from "overpolicing" to sexual abuse.

32. Whatever the type of intersectional discrimination, the consequence is that different forms of discrimination are more often than not experienced simultaneously by marginalized women. But the reality of their lives, shaped as it is by disadvantage and social injustice, is ignored and lies unaddressed within the traditional framework of understanding gender and racial discrimination, because of the lack of a holistic approach to gender and racial discrimination.

33. Intervention based on partial and sometimes distorted understandings of women's conditions are likely to be ineffective and perhaps counterproductive. This emphasizes the importance of developing a framework for uncovering and analysing intersectional discrimination. There is not one dimension to gender and racial discrimination, but many. In fact, there is a complex interplay between gender and race or ethnicity and the discrimination or violations therefrom. Only through a closer examination of the varying dynamics that shape the subordination of raced women can useful intervention and protection be developed.[29]

34. A comprehensive gender analysis requires examination of the effects of gender, the effects of race, and the effects of gender and race factors combined on the form violations take, the context in which they occur, their consequences and the availability and accessibility of remedies to victims.[30] As underlined by the Committee on the Elimination of Racial Discrimination,[31] a violation can be committed against a person because of his or her gender, because of his or her race, or because of gender and racial factors combined. For example, women members of a particular racial or ethnic group can be targeted for trafficking or abduction into sexual slavery. The violation can also occur because of the position the person is in as a woman and/or as a member of a particular racial or ethnic group (women are subjected to personal status laws, customary laws or religious-based restrictions) and has particular

consequences due to factors relating to the person's gender and/or race (in situations of ethnic conflict, both women and men of opposing ethnic groups may be targeted for rape, but only women can become pregnant as a result). Access to adequate remedies and complaint mechanisms for the violation may also be limited by barriers relating to the person's gender and/or race: women members of particular racial or ethnic groups, because of their gender and/or their race or ethnicity, may be disproportionately affected by illiteracy, lack of legal capacity, community pressure and other social barriers.

II. ENCOUNTERS WITH THE CRIMINAL JUSTICE SYSTEM

35. Two major theoretical issues delineate existing challenges to State interests and national policies regarding the identification and eradication of racial and gender discrimination: intersectionality, that is, the meaning of the intersection of race and gender for national efforts to eradicate racial and gender discrimination; and distributive justice issues that relate to administrative law and governance. The distributive justice issues include due process of law, protocols to insure scientific and medical ethics, access to economic opportunities, access to civic venues and political participation, and social and cultural advancement based on advancing human rights for women. They are said to be at the heart of contemporary concerns to improve the construction and operation of State interests on behalf of women of colour.[32]

36. Mechanisms for reporting and remedying racial discrimination are inaccessible to many women seeking redress because of issues relating to their gender and race. Barriers include their lack of legal standing, denial of their suffrage, lack of remedy or enforcement for the violation in question, restriction on their access to public places, bias in the judicial system, cultural insensitivity and illiteracy. This report attempts to highlight the encounters of the race/gender intersectionality with the criminal justice system through select illustrative examples of violence against women: rape, domestic violence, the death penalty and when the victim is from a minority group.[33]

A. Minority women's experience of domestic violence - The problem of "overpolicing" and "underpolicing"

37. Through black and minority women's experience of domestic violence, Pragna Patel has shown how in the United Kingdom institutionalized racist and sexist policies, immigration law and practice, the criminal justice system and the social welfare system compounds the violence that South Asian women experience in their families, restricting their choices and increasing their vulnerability to further violence.[34] Thus many Asian women are denied the right to protection and redress from abuses experienced at the hands of the State or private actors. "It is significant that even so-called progressive policies and practices founded on the notion of 'multiculturalism' have the peculiar effect of reinforcing patriarchal power relations within black families and communities."[35]

38. Pragna Patel has identified two major problems to do with the treatment of black women in the criminal justice system; black women are either "overpoliced" or "underpoliced".

The problem of "overpolicing"

39. There has been much criticism and research in the United Kingdom about the way in which the police, with the help of the media, have tended to construct certain crimes in racial terms. Such discrimination, particularly from the police, can range from oppressive behaviour to indifference and inaction (in cases where Asian and other minority women who make demands for protection from male violence are asked to produce their passports to demonstrate that they are not illegal immigrants).

40. In other instances, where reports are made on violent partners who have insecure immigration status, the police and prosecutorial services take the extreme step of having them deported. As a matter of routine, the State will almost always recommend deportation, on the grounds that such men are not conducive to the public good. However, this presents black women with impossible choices. Whilst protection and redress from the criminal justice system is vital, aiding the State in implementing racist immigration policies amounts to legitimizing institutional racism.

41. Whilst the need to criminalize domestic violence is an important demand made by all women, black women often find themselves unable to utilize the criminal justice system without fear of extreme State measures. Such measures are nothing to do with making their safety and protection a paramount concern, but about extending the net of immigration surveillance and control.

42. There are cases where black women who turn to the police for protection are criminalized themselves. In one case, an Asian woman was subjected to violence from her husband, who also threatened to have her locked up in a mental institution. However, when she called the police, they assaulted her. She spoke no English, but instead of providing an interpreter, the police spoke to her husband and then forcibly dragged her, without her shoes, to the local police station, after threatening to handcuff her. She suffered injuries in the process. At the police station, she was searched and locked in a cell without explanation. Some hours later she was released, without assistance. She was too terrified of making a formal complaint about police abuse of powers for fear of reprisals from them.

43. In other cases, women's partners may be subjected to oppressive police intervention. There are numerous reported cases of black men dying in police custody, some as a result of being arrested for domestic violence. Research shows that in the United Kingdom, black, African-Caribbean men in particular, are overrepresented in the statistics for deaths in custody. The racism manifest in such violations is a significant reason why some African-Caribbean women are reluctant to expose their men to State violence and abuse. The irony is that black women are effectively denied the right to police protection and criminal justice remedies in the face of domestic violence, thus allowing men to escape social censure for their violence.

"Underpolicing"

44. Traditionally, male violence has always been underpoliced. This is true for all women. Such reluctance is based on the myth that women always drop charges and so waste police time.

45. This general reluctance to criminalize domestic violence is marked in cases involving Asian women, where police sexism is compounded by racial and cultural stereotypes about the women they encounter. Many of the cases presented show that the different cultural and religious backgrounds of Asian women are often invoked as an excuse to provide "culturally sensitive services" or to do nothing. Research (including by the police) on Asian women and domestic violence shows that many Asian women are ignorant of their rights. As a direct result, many have low or no expectations of the police and will quite readily accept police assertions that there is nothing they can do. Under the guise of multiculturalism, the notion of difference becomes a means by which patriarchal power and gender inequality within minority communities remains intact. Language difficulties are also exploited by the police. In many cases, interpreters are not provided or, worse still, there is a reliance on children and even violent partners to interpret for the women. Moreover, there is often undue delay in taking witness statements, on the basis that interpreters are not available. Even where interpreters are available, they are almost always male. Further, interpreters are not subject to any professional code of conduct and are not accountable to anyone where they have breached, for example, issues of confidentiality.

46. The police complaints mechanism becomes a means by which the abuse of State powers is obscured, thus denying women an effective means of redress against violations by the State. The result is that patriarchal power within minority communities, manifest for example in abuses such as domestic violence or forced marriages, is reinforced and goes unchecked. The message is that Asian women have no right to rely on the State for protection or to uphold their human rights. On the other hand, the notion of "difference" is ignored in official strategies on violence, to the extent that language difficulties, racism and other obstacles which prevent Asian women from reporting instances of violence are not addressed. On the other hand, differences in culture and religion are invoked in exaggerated and stereotypical forms to justify non-interference in minority families, for fear of being perceived to be "culturally insensitive". This latter approach amounts to an inverse form of racism, since it denies the right to protection available to other women in society and in fact perpetuates patriarchal abuse of power within minority communities.

B. Incarceration of racialized women

47. A great deal of research has been conducted into the intersectionality between race and gender suffered by black women in the United States. Important distinctions complicate the historical relationships between, especially, women of African and Native American ancestry, and in the twentieth century women of Asian and Latin ancestry, and the State. Hence, through several centuries distributive justice issues have been different for African American and indigenous women than for the nation's white skinned women, or for women whose immigrant status situates their experiences of gender and racial/ethnic subordination in the late nineteenth and through the twentieth century.[36]

48. The legacy of racial and sexual enslavement and gender subordination experienced by women of African descent in the Americas and the Caribbean has situated distributive justice issues at the forefront of challenges to State interests that redress the marginalization and exclusion of women historically defined by a "one drop" of blood rule as "black". The sexual exploitation experienced by the majority of women of African descent in the Americas was

institutionalized into the fabric of social relations for such an extended period that in the aftermath of slavery organized crime targeted many poor women of African descent for prostitution and sex work.

49. Women of colour are the fastest growing group of prisoners in the United States. In addition, they are the victims of a large number of crimes; yet they obtain very little redress. Propaganda against poor and racialized women may contribute to the tendency of many people to doubt their truthfulness when they attempt to seek the protection of the authorities. In the United States, black and Latino women are least likely to see the men accused of raping them prosecuted and incarcerated.[37] Studies suggest that the racial identity of the victim plays a significant role in determining such outcomes, and there is evidence that jurors may be influenced by sexualized propaganda to believe that racialized women are more likely to consent to sex in circumstances that the jurors would find doubtful if the victim did not belong to a racial minority.

50. The expert group meeting in Zagreb[38] discussed the increase in the rates of incarceration of racialized women in industrialized and developing societies. Incarceration policies have been addressed by racial justice advocates, but this advocacy has focused predominantly on men. In many countries, like the United States, racialized women, including indigenous women, represent the fastest growing segment of the prison population. The larger issue of "racial profiling" and the dramatic increase in rates of incarceration for black and Latina women are linked to strong drug laws and an enormously disproportionate number of women of colour are going to prison for drug related activity. There are many issues in the debate about the dramatic escalation of drug related convictions of, especially, low-income women of colour in the United States. Certainly, different standards for arrest and sentencing across racial lines are crucial. Arrests for the possession of small amounts of cocaine by members of the middle class result in misdemeanour charges, while arrests of low-income people often lead to felony charges.

51. According to a recent report[39] since 1980, the number of women in prison has increased at nearly double the rate for men. There are now nearly seven times as many women in state and federal prisons as there were in 1980, representing an increase of 573 per cent. Drug offences accounted for half of the increase in the number of women incarcerated from 1986 to 1996, compared to only 32 per cent of the increase in incarceration rates for men. Sixty-five per cent of black women sentenced to prison in New York in 1995 were convicted of a drug offence, compared to 82 per cent of Latina women and 40 per cent of white women. African American and Latina women represent a disproportionate number of the women sentenced to prison for drug offences. In New York, black and Latina women accounted for 91 per cent of prison sentences for drugs, but only 32 per cent of the State population.

52. Women also run the risk of gender discrimination in the judicial process. Because the majority of female inmates are mothers, the effects of the increase in female incarceration will have long-term cumulative adverse effects.

53. Further, women in prison tend to suffer multiple oppression. Many are physically and sexually abused, denied the custody of their infants and often deprived of the ability to care for themselves properly in terms of personal hygiene. Most are low income and, unlike racialized men who may have been convicted of violent crime, many have been incarcerated

for non-violent offences, such as welfare fraud. All women, and particularly racialized women, are more likely to be subject to custodial rape by police and other criminal justice personnel.

54. Incarcerated women of colour confront many problems in terms of their reproductive and sexual rights, including poor prenatal care, malnutrition, high rates of miscarriage, difficulty or inability to have a requested abortion and, very often, lack of contraceptives. Hence, the treatment of incarcerated women, largely hidden from public view, greatly needs attention and reform.

55. Several scholars have considered in detail the failure of United States jurisprudence to recognize the problems associated with the intersection between race and gender. For example, Professor Kimberlé Crenshaw contends that the tendency of United States courts to treat "race and gender as mutually exclusive legal categories of experience and analysis diminishes the multidimensional experiences of black women".[40] An example of this type of juridical analysis is the decision in DeGraffenreid et al. v. General Motors, 413 F. Supp. 142 (E.D. Mo. 1976). Five black women sued General Motors because of its seniority system, which allegedly perpetuated past discrimination against black women. Deciding in favour of General Motors, a United States district court held that the lawsuit must state a cause of action for race discrimination, separately or concurrently, but not a single cause based on an amalgam of both.

56. Racialized women are often in situations that put them at risk of violence and abuse by police patrols. Migrant women workers may be subject to detention and often face unwanted strip searches and/or sexual abuse and deportation at State borders. In these cases, the country of origin, as well as the country of destination may be unwilling to take responsibility for State violations perpetrated against these women.

C. Vulnerability of women from a minority group

57. Attempts by women, particularly from a minority group, to seek justice through the criminal justice system are regularly forestalled. Although legislation exists, measures to ensure its full implementation - including communicating provisions to the public, training officials responsible for administering the legislation, providing legal support services to enable beneficiaries to invoke legislation, monitoring implementation and ensuring further development of legislation in response to the reality on the ground - have not been sufficient. Unless supported by male relatives or a strong social group, women victims of crime are at a severe disadvantage within the criminal justice system. Threats and harassment by perpetrators and their communities, and social pressures which exist within families and communities force women victims to compromise or withdraw rather than to pursue justice. Gender biases which exist within institutions of redress are often exacerbated by ingrained caste and other biases against members of disadvantaged communities.[41]

58. Not many of the cases reach the courts for trial, partly in view of the shame and honour involved and partly due to the existing difficult and complicated procedural laws. It has been noticed that the police are generally apathetic to the registration of complaints involving rape. Even in those cases which come to courts for trial after investigations and medical examinations have been conducted, courts have not been sensitive to the trauma experienced by the rape victims, both during the commission of the offence and during the trial. Courts are also

oblivious of the social stigma and ostracism a victim of rape has to face throughout her life and many rapists are acquitted on wholly irrelevant and flimsy grounds of age, religion, caste, status and other considerations.[42]

59. An illustration of this, is violence against marginalized groups of women in Uttar Pradesh and Rajasthan, in India.[43] The issue of access to justice for women victims of violence in the community is one which brings into sharp focus continuing problems of discrimination at the grass-roots level in Indian society, where concepts of patriarchy, caste, community and honour have an immediate impact on victims and contribute directly to a situation of impunity for perpetrators.

60. The situation of Dalit, "backward caste" and Adivasi women and women otherwise marginalized by their economic position:

> Highlights the role of discrimination within society and the State in not only increasing the vulnerability of women to torture but reducing their chances of obtaining justice;
>
> Demonstrates the vulnerability of certain groups of women to violence in the context of gender as well as caste and other forms of social and racial discrimination;
>
> States the problems these groups have in obtaining access to justice and sets the theory of safeguards and judicial process against practices of non-implementation, inaction and discrimination that are a reality for many victims;
>
> Presents evidence of connivance by public servants in covering up crimes of violence against women and ensuring that perpetrators are not prosecuted, as well as evidence of discrimination within organs of the criminal justice system: the State fails to act with due diligence to prevent, investigate and punish many acts of violence against women which occur in the community.

61. In its initial report to CEDAW,[44] India acknowledged:

> "A large number of women have not been able to fully avail the benefits under the Constitution and other legal provisions. There are several deterrents in the way of women seeking legal redress. Insufficiency of legal aid, procedural lacunae and delays, lack of basic knowledge about the law and procedures and long drawn out trials continue to hamper women's access to legal redress."

62. "Even today, as we approach the twenty-first century, violence against women is usually treated as a marginal issue by the law-enforcement machinery in our country, whether it be the police, the prosecutors or the medico-legal fraternity or often even the judiciary. It is essential to sensitize this entire machinery to gender issues, particularly violence against women. Often, the police and other personnel are unaware of the legal safeguards for women and the amendments to laws relating to such safeguards."[45] These problems are real for women attempting to access justice. However, these problems are also apparent for many others in India and are characteristic of an overloaded criminal justice system which mitigates against a range of marginalized groups in society. The problems faced by underprivileged and marginalized

women in accessing justice go beyond those identified above by the Government. Notably these involve gender, caste and class discrimination within society, organs of government and the criminal justice system.

63. Many women do not approach the police for fear of dishonour or that they will be dismissed or further abused. Sometimes women do not attempt to seek police help as they know this to be futile. For instance, an activist working with women in Uttar Pradesh estimated that only 5 per cent of cases of violence against Dalit women are registered.[46]

64. Discrimination and abuse within the police force, demonstrated by individual incidents of connivance, extend to the administration of policing and the manner in which crimes against women are viewed. For example, it is reported that, after the filing of a first information report (FIR), a large number of cases of violence against women were subsequently logged as having been found "false" after investigation. The labelling of these cases as "false" is itself of concern as it implies that women have falsely or maliciously filed the cases and plays into the hands of those who argue that women misuse legal provisions to accuse men wrongfully, as a means of punishment. The Rajasthan government indicated that 30 per cent of all cases of crimes against women in the State had been found to be "false" after investigation. Information was not provided by the government of Uttar Pradesh.

65. Many cases demonstrate the refusal of police officers at the local level to file complaints brought by disadvantaged groups, particularly women, and the problems members of these groups face in even approaching the police.[47] The police are reportedly reluctant to file FIRs citing offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 because the perpetrators - often powerful individuals within the community or even caste group to which police officers themselves belong - receive such stringent punishments. They also reportedly fail to file proper FIRs in cases of rape and other forms of violence against women. Biased handling of the original complaint by the police can have disastrous effects on a case. Lack of legal or even basic literacy on the part of complainants means that it is rare for them to detect that an inaccurate provision has been used until it is too late. Attempting to amend FIRs can also have serious consequences as complainants can be accused of changing their story for malicious motives.

66. Many incidents of violence against women do not reach the stage of registration because of the role of compromises, threats and harassment, as well as direct refusal by the police to register such cases. According to the National Crime Records Bureau figures, in cases of rape overall, the number of trials completed within a year is extremely low. Of 58,655 cases of rape pending trial at the start of 1998, 48,685 remained pending trial at the end of the year. Only 16 per cent of those cases went to trial during 1998 and only 4.4 per cent of the 58,655 cases resulted in conviction; 83 per cent remained pending trial. The percentages are similar for molestation (under section 354, IPC). Dalits and others are said to be so reliant economically on the upper castes that they are afraid even to think of filing a case under the Act because of the possible consequences. Many Dalits are not aware of the provisions of the Act and their rights under it and it is rare for police voluntarily to inform them of those rights.

67. Despite this, there is no protection programme for victims or witnesses in India, which leads generally to a very high number of acquittals in criminal cases owing to victims or

witnesses withdrawing testimony and the resulting lack of evidence. In the case of women victims from marginalized communities, the odds are stacked against them and without some form of protection or their removal from the context in which they might be receiving threats it is, not surprisingly, rare for women to pursue complaints in the courts. Victims have reportedly received direct or indirect threats from perpetrators, but have received no protection from the State despite complaining to the authorities - ensuring that perpetrators can continue to harass them, and in several cases they have committed further acts of violence.[48]

68. The police are also accused of withholding and destroying evidence in many cases, often at the behest of the alleged perpetrators, who may have caste or other community links with the police officers. The police also have the ability to delay the recording of medical evidence. It is not a legal requirement for the police to send women who allege that they have been raped for an immediate medical examination. Much medical evidence is lost because this simple procedure is not followed. Reliance on the evidence of witnesses is also extremely problematic. It is common for witnesses in cases of violence against women to withdraw their testimony, often having arranged a financial deal with the accused. A lawyer in Uttar Pradesh estimated that around 25 per cent of witnesses withdraw their testimony because of pressure placed on them by the accused or members of their community, and noted that in cases regarding women this percentage would only increase because of the patriarchal pressures which exist in these contexts. It is also reported that in many cases witnesses give contradictory statements in court because they have been planted by police or defence lawyers.

69. An example of the failure of the Indian criminal justice system to address caste issues is the case of Bhawanri Devi. This case and that of Narbada, both described below, clearly demonstrate the problem of discrimination faced by marginalized women throughout the process of trying to access justice at all stages of the criminal justice system.[49]

70. Bhanwari Devi, a village development worker active in trying to eradicate child marriage in India, was raped on 22 September 1992 in Bhateri village, Rajasthan, by five men of a higher caste. The police initially refused to record Bhanwari Devi's statement and she was also refused a medical examination. An inquiry, set up by the government after much protest, reportedly subjected her to a gruelling and intrusive interrogation. The inquiry found her allegations true and a charge sheet was filled against five men. The trial began in a lower court in November 1994. In a verdict given in November 1995, the court found that the delay in filing her complaint with the police and in obtaining a medical examination indicated that she had made the story up. The court observed that the incident could not have taken place because upper caste men, including a Brahmin, would not rape a woman of a lower caste. The men were acquitted of the charge of gang rape but convicted of minor crimes. Bhanwari Devi has been ostracized by the village community since the incident in 1992. Throughout, constant pressure was put on her to withdraw the case by members of the local community, as well as by politicians.

71. Narbada, an 18-year-old woman from Udaipur district of Rajasthan was reportedly raped by a Rajput (upper caste) landlord in March 2000. The attacker's mother reportedly heard the victim's screams but did nothing to stop her son. She then beat Narbada and told her not to go to the police. When Narbada tried to go to the police with her uncle, 50 Rajputs stopped them. When they reached the police station two days later, they were verbally abused and told to pay

Rs. 500 ($11) if they wanted to file a complaint, which they refused to pay. They travelled three and half hours to the district headquarters, where the Superintendent of Police recorded their complaint. Police officers were present during her medical examination, which was conducted four weeks after the rape. When the case went to court, the public prosecutor tried to convince Narbada and her family to withdraw the complaint. Narbada and her family continue to face harassment from members of the Rajput community.

72. In neighbouring Pakistan, Christian women are very vulnerable to abuse and are unlikely to obtain State protection after suffering abuses in the home as they are the objects of multiple forms of discrimination. Many Christian girls and women join the work force to support their families; in a society where this is not the norm, such women are often looked at with suspicion and considered easy prey for exploitation, humiliation and sexual advances, often leading to rape and other forms of sexual abuse. The following case of the rape of eight young Christian girls and women in a village in Punjab (May 2000) arose in this context of multiple discrimination, relating to religion, gender and low social status. The State has reportedly been extremely reluctant to assist the victims in obtaining legal redress and has taken some action only under pressure from the media and from human rights groups. It is alleged that without the pressure from the media and from human rights groups, the gang rape would not have been investigated by the police; social inequality, religious and gender bias would have contributed to the crime and the victims being ignored by the State.[50]

73. Gender bias among the police is rarely addressed by Governments, despite their international obligation to eradicate it. Rarely do the authorities investigate allegations of bias, apply appropriate disciplinary measures to police officers who discriminate against women victims or train all police officers how to deal with allegations of violence against women.

74. The police often share the attitudes of perpetrators of violence against women and consciously or unconsciously shield the offenders. They frequently send abused women back home rather than file complaints. Sometimes they advise mediation and reconciliation. In many instances, police have humiliated victims, adding to their suffering rather than alleviating it. For women belonging to racial, ethnic or religious minorities, the police are often even more reluctant to intervene, either on spurious grounds of "cultural sensitivity" or through racial prejudice.[51]

75. State institutions continue to reflect discrimination within society. The effects of discrimination can range from direct connivance of the police with perpetrators, to inaction by the police or members of the legal profession, to cursory treatment of trials by members of the judiciary. As an example, police officers in India have their own caste and gender biases and may often behave towards Dalits and Adivasis in a discriminatory way - acting within the norms of their social surroundings. The State must train police and other State officials to separate their caste, gender and other prejudices from their duty to protect citizens if legislative and administrative policies are to have any meaning. The State cannot afford to overlook this problem any longer; otherwise all its sincere efforts will be wasted.

III. TRAFFICKING, MIGRATION AND RACE

A. Migration

76. A major issue at the intersection of gender and race/ethnicity, expressed in racial/ethnic discrimination, is the situation of international migrant workers. Indeed, immigrant and refugee women are particularly vulnerable to discrimination. As stated during the Bellagio Consultation held in Italy from 24 to 28 January 2000, in preparation for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in many cases, women migrants are subjected not only to racial discrimination, but also to discrimination and abuse on the basis of their gender.[52]

77. In many developing countries, there is a tendency for women, motivated mainly by economic considerations, to become migrant workers in countries that are socially and culturally completely different from their own. Today, despite shortcomings in statistics and varying definitions of "migrant", it is known that at least 50 million women are international migrants, approximately 12 million of them in Europe.[53] The expert group meeting in Zagreb,[54] in particular, drew attention to the critical and close relationship between the movement of people and all forms of discrimination, especially racial discrimination. Racist ideology and racial, ethnic and gender discrimination have therefore been distinguished as root causes of migration and trafficking within countries and across national borders, occurring in both countries of origin and countries of destination.

78. The lack of rights afforded to women serves as the primary causative factor of both women's migration and trafficking in women. While such rights find expression in constitutions, laws and policies, women nonetheless continue to be denied full citizenship because Governments fail to protect and promote the rights of women. In the home, in the community and in State structures, women are discriminated against on numerous, intersecting levels. By failing to protect and promote women's civil, political, economic and social rights, Governments create situations in which trafficking flourishes.[55] So, the failure of the State to guarantee women's rights leads to sexual and economic exploitation of women in both the home and the community and within the local, national and global economies. Economic, political and social structures and the models of development that arise from such structures have failed women. They have failed in their attempts to provide basic economic and social rights to all people, particularly to women, and have further entrenched sex-based divisions of education, labour and migration.

79. Furthermore, as has been stated, gender-based discrimination intersects with discriminations based on other forms of "otherness", such as race, ethnicity, religion and economic status, thus forcing the majority of the world's women into situations of double or triple marginalization. Because discrimination based on ethnicity, race, religion, etc. is imbedded in State and social structures, such discrimination decreases the rights and remedies available to women and increases women's vulnerability to violence and abuse, including trafficking.[56]

80. Trafficking in women flourishes also in many less developed countries because the vulnerabilities arising from women's lack of access to resources, poverty and gender

discrimination are maintained through the collusion of the market, the State, the community and the family unit. Traditional family structures, based on the maintenance of traditional sex roles and the division of labour that derives from such roles (for women, housekeeping, care-taking and other unpaid or underpaid subsistence labour) support the system of trafficking. Further, feudal and exploitive social structures have given rise in many countries, such as Nepal and Bangladesh, to consumerism and a skewed gender, caste and class based resource distribution system. In addition, certain religious and customary practices, reinforced by government policies, further entrench and validate discrimination and perpetuate the cycle of oppression of women.

81. The failure of existing economic, political and social structures to provide equal and just opportunities for women to work has contributed to the feminization of poverty, which in turn has led to the feminization of migration, as women leave their homes in search of viable economic options. The contemporary global situation is defined as economic globalization. At the core of this process is large-scale transfer of capital, raw materials and labour resources. The transfer of labour resources is from less economically developed countries to more developed countries. Migrants, however, cannot enjoy the same civil, political and economic rights as the native population of the countries in which they arrive. There are obvious limitations to their access to social programmes, as well as restricted opportunities in the labour market.[57]

82. Globalization may have dire consequences for human rights generally and women's human rights particularly, in terms of eroding civil, political, economic, social and cultural rights in the name of development and macro-level economic restructuring and stability. In the countries of the South, structural adjustment programmes have led to increased impoverishment, particularly amongst women, displacement and internal strife resulting from the political instabilities caused by devaluing national currencies, increasing debt and dependence on foreign direct investment. For example, the economic crisis in East Asia has resulted in many women being trafficked to escape from sudden poverty. In some countries, development policies and practices have led to large-scale displacements of local populations. Political instability, militarism, civil unrest, internal armed conflict and natural disasters also exacerbate women's vulnerabilities and may result in an increase in trafficking. Most recently, according to reports, trafficking networks responded to the war in Kosovo and consequent exodus of refugees by increasing recruitment of Kosovars.

83. Furthermore, globalization exacerbates the structural, institutional and entrenched patterns of racism that exist within and between countries and regions. It creates new patterns of exclusion, marginalization and exploitation. The excluded are mostly the poor, the black and the formerly-colonized.[58]

84. Very often migrants work illegally, without any labour protection. In other words, nationality more frequently than ever before becomes a factor of subordination and exploitation. As a subordinate or peripheral labour force, migrants reproduce lower standards of living in developed countries and constitute marginal groups of society. As a result, they do not receive respect or real trust from the rest of society and racial prejudice arises.

85. So, race, ethnicity and gender discrimination can be push or demand factors for migration and trafficking. The seminar of experts held in Bangkok noted that racist ideology and racial and

gender discrimination could create a demand in the region or country of destination which could contribute to migration and trafficking.[59] It also noted that migration was the movement of people both within and across national borders and that people migrated inter alia because of poverty, "perceived deprivation", racial discrimination, internal conflicts, lack of opportunity, discrimination against women and to reunite separated families. The seminar further noted that trafficking was a major concern for the Asian and Pacific region and that its primary victims were women and children. Trafficking also involved the involuntary movement of people within countries and across boundaries, incited by coercion, trickery or deceit. Sometimes trafficking was a result of racial discrimination and/or the limited social and economic opportunities available to the trafficked persons and their families.

B. Women migrant workers

86. In comparison with men, women migrants find work primarily in the lower employment sectors of the Western economy, because they constitute a smaller percentage of those who can be invited as "high tech" and intellectual professionals. Immigration policy towards these two groups of labour migrants is quite different. "Intellectual migration" has a selective character and is well supported financially. "Unqualified migration" has a more spontaneous character and is suppressed by severe regulations; most women migrants experience all the disadvantages of such policy.[60]

87. The typical migrant women's employment sectors are the leisure and entertainment industry (including sex services), domestic work and childcare. This type of labour is associated with women of a particular nation or race and is socially devalued. The regulation of labour in these sectors is poorly defined in contracts with employers and rarely socially controlled. The fact that a woman is employed in these sectors as an individual but not as a representative of a special professional group makes her vulnerable. This is the essence of gender/national differentiation with men.

Domestic workers

88. A significant number of the migrant women are employed as domestic workers, where they can be vulnerable to mistreatment, exploitation, humiliation and abuse, including sexual abuse by their male employer, or other males in the household of the employer as well as corrupt police.[61] Indeed, "factors such as isolation from one's community and family, sexism, racism and classism further exacerbate the conditions that lead to widespread violence against domestic servants and abuse at the hands of their employers within the walls of what has become both their home and their workplace."[62] [63]

89. Dependence on the employer, isolated working conditions, long working hours, low pay and social isolation make migrant women workers very vulnerable to violence, including from their employers or their families.[64]

90. A widely reported form of non-physical violence is the practice of withholding the passport of the migrant woman, which has the effect of imprisoning the woman inside her employers' compound. Other non-physical abuses are the withholding of wages, long working hours and under-feeding. But since labour laws do not apply to illegal workers and some

countries explicitly exclude legal domestic workers from labour laws altogether, these abuses are suffered by women in isolation and employers can behave with near total impunity. Migrant women also face physical abuse by their employers, including kicking, beating, slapping, punching, hair pulling, sexual assault and rape. Furthermore, female migrant workers suffer at the hands of public officials. For example, women are sent back to their employer by the police, or they are sexually assaulted at the police station or detention centre. In certain cases, women are arbitrarily detained at the police station.[65]

91. Cases have surfaced in which, because of their low level of education and ignorance of their rights as workers, these women are exposed to exploitation and violations of their human rights without sufficient access to legal assistance, and therefore to justice. These factors are also contributing reasons why abuses faced by international migrants are chronically under-reported and, even when reported, are under-investigated. In one case, even, a woman worker was accused of the murder of her employer, put on trial, convicted, put in jail and executed without the relevant authorities of her country, and therefore also her family, having been notified. On the other hand, there is also the situation where these women are already exploited and sometimes mistreated when recruited in the home country.

92. For example, in November 1999, a Sri Lankan domestic worker was sentenced to two months' imprisonment in Dubai after she tore up a copy of the Koran to protest against six months of sexual abuse by her employer and his two sons. She reported the abuse in court and said she had found no way to escape. Court officials responded by advising families with non-Muslim maids to keep the holy texts out of their reach. There was no report of any inquiry into her allegation of rape, let alone any prosecution.[66]

93. Nasiroh, a young Indonesian woman, went to Saudi Arabia in 1993 as a domestic worker. It is reported that she was sexually abused by her employer, falsely accused of his murder and then tortured and sexually abused by police officers during two years' incommunicado detention. Officials from her embassy did not visit her. Her trial was so cursory that she did not know she had been convicted. She still has no idea for what "crime" she was imprisoned for five years.[67]

94. The cases described above indicate the necessity for relevant government and private agencies in the sending and receiving countries of these workers to provide the means and instruments for the legal, social and personal protection of these women workers, from the time they are recruited in their home country and in the work situation in the country of employment.

95. Even in those countries where provisions exist to ensure the fair treatment of domestic workers, they may at the same time bind the worker to a particular type of employment and sometimes to a particular employer. In these cases, it is not uncommon for women migrant workers to lose their residence status on termination of their contracts with individual employers and to become illegal immigrants.

C. Trafficking

96. "Trafficking in persons must be viewed within the context of international and national movements and migrations that increasingly are being undertaken owing to the economic globalization, the feminization of migration, armed conflict, the breakdown or reconfiguration of

the State and the transformation of political boundaries."[68] Problems facing female migrants have been compounded by several factors, including violation of basic human rights in the form of extortion, debt bondage and sexual exploitation. Unfortunately, government efforts to prosecute, convict and punish those responsible, i.e. both officials and traffickers, have amounted to very little.[69]

97. Trafficking in women can be viewed as the consequence of the intersection between racial and gender discrimination. Both create dynamics of power in which women are extremely vulnerable. Indeed, women from certain racial and ethnic groups, indigenous and migrant women may frequently be targeted for/are more vulnerable to trafficking, sexual slavery or prostitution.[70]

98. It is reported that owing to widespread human rights violations and poor economic conditions, women from all ethnic groups often become refugees and migrant workers in Thailand, India and Bangladesh. Many of these women are lured or trapped into prostitution where they are at a high risk of HIV infection.[71]

99. Buraku women in Japanese society face triple oppression because they are Buraku, poor and women. They form the lowest level of labour and supplement their family's income even from an early age. They do the most physical and manual labour and work for longer hours than the men but are paid less. They do not have an education and are caught in a continuous cycle of poverty. Many women have been forced into prostitution because there is no other way to earn a livelihood.[72]

100. It has been reported that owing to caste discrimination against Dalits (untouchables) in Nepal, Dalit women (20 per cent of all women in Nepal) suffer misery, poverty and homelessness.[73] Their literacy rate is 7 per cent, and 60 per cent of Dalit women are involved in commercial sex in Nepal and abroad.[74]

101. Women's vulnerability to trafficking is greater because of the lack of avenues for legal migration, especially as women do not have the same education and employment opportunities as men and because of social inequalities and economic disparities within and between certain States. These factors force women to look for alternative routes of migration, leaving them particularly vulnerable to recruitment by traffickers.

102. The apparent link between protectionist, anti-immigration policies and the phenomenon of trafficking must be highlighted.[75] Restrictive and exclusionary immigration policies, when combined with the destabilizing effects of conflict, globalization and neo-liberal development strategies which result in increasing outflows of legal and illegal migrant labour, serve as important causative factors for the persistence and prevalence of trafficking. Anti-immigration policies aid and abet traffickers. Documentation shows that inflexible policies of exclusion, which are enforced through severe punishments of a penal nature and deportation for their breach, feed directly into the hands of traffickers. The availability of legal migrant work, which is subject to government regulation and scrutiny, reduces the reliance on third parties of those who seek to migrate for work. Trafficking economies - which arise out of a combination of supply, demand and illegality - are less likely to develop in situations in which opportunities exist for legal migrant work.

103. Strict anti-immigration policies, which reduce opportunities for legal migration and thereby encourage migrants to turn to third parties for assistance in migrating and to rely on false promises of legal migration, serve to provide an ever-growing number of clients to the increasing number of underground networks of immigrant smugglers.

104. Gender discrimination against women and girls produces inequality in the labour market, lack of life perspectives and social control over their behaviour. This makes them dependent on job opportunities abroad and/or on changing the social environment. In many cases the recruitment of women and girls happens on an informal level within emotional relationships and family structures. Women and girls are not protected and often do not protect themselves in this private sphere as it is a place of trust and personal commitment. They are much more vulnerable to fraud, deception, coercion and violence in the private sphere.

105. In terms of the economic push and pull factors in trafficking, women are especially discriminated against in the global migration process as there are only limited possibilities for legal and regular jobs for migrant women. Women can often only choose between irregular domestic work or the illegal sex industry. Once they are in, they have to face different discriminatory stereotypes, such as being a prostitute and an illegal migrant doing domestic or sweatshop work.

106. In the country of destination, trafficked women and girls are treated by the authorities as illegal migrants under the law on aliens. This turns victims into perpetrators. Victims of trafficking are considered as migrant prostitutes and are located in a vacuum without rights.

Effects

107. Trafficking is usually seen to be the result of gender discrimination and the racial aspects of it are generally overlooked.

108. Strict anti-immigration policies have a strong impact on the living and working conditions of migrant workers, increasing their vulnerability to violence, abuse and control by criminal networks.

109. Racial discrimination may not only constitute a risk for trafficking, but it may also determine the treatment that trafficked women experience in the countries of destination.[76] For example, it was reported at the Warsaw Regional Seminar of Experts held in July 2000 that 80 per cent of trafficked women in Germany came from Central and Eastern Europe and that these women faced triple discrimination on account of being women, of being foreigners and of having been forced into prostitution.[77] Victims of trafficking often have little access to legal protection and may find themselves kept as prisoners in brothels and other similar establishments. Women who have been trafficked also face further abuses. In addition to racial discrimination, trafficked women are also subject to physical and psychological violence.[78] They are often sexually abused and raped to break them mentally and emotionally, in order to force them into sex work. Many are beaten and raped to punish them for trying to escape and for refusing to have sex with customers. They are also subject to starvation, forced use of drugs and alcohol, burning with cigarettes, isolation in dark rooms, being beaten and threats to themselves or their families. As well as physical violence, trafficked women suffer other abuses, including

unlawful confinement, confiscation of their identity papers and even enslavement. As in the case of irregular migrant women, they often lack documents and are unregistered with the proper authorities and therefore live in constant fear of police arrest, fines, imprisonment and expulsion. These abuses are compounded by the treatment trafficked women receive from State officials, who treat them as criminals rather than victims.

110. Trafficked women face further obstacles when seeking redress for this particular form of abuse. In some countries, government officials, police officers and immigration personnel often ignore, facilitate and even profit from trafficking. Once trafficked women are arrested or detained, their treatment as offenders charged with illegal entry and the requirement that they appear in court and pay a fine, open the door to potential violence by law enforcement officers themselves.[79] Trafficking is also frequently seen as an illegal migration or prostitution problem and thus national policies tend to criminalize the trafficked victims rather than the traffickers. Very often, it is the victims who are arrested and deported while the traffickers continue to operate undeterred. Furthermore, few women receive any assistance, protection, or legal remedy against their traffickers in the destination country or in their country of origin.[80]

111. In addition, the repatriation of victims has also given rise to a number of concerns. In the majority of cases, victims are left with no guarantees of safe return to their homeland, encouraging further abuse. Numerous reports of NGOs and victims have indicated an involvement of officials in trafficking and forced labour practices at local as well as international levels.[81]

112. Moreover, the incidence of trafficking has an impact on women coming from those ethnic minority groups closely identified with trafficking. It is therefore quite usual that women, not prostitutes and not victims of trafficking, but coming from these ethnic minorities, are stigmatized - for example Albanian or Nigerian women in Italy or in Spain.[82]

D. Immigrant women

113. The Bangkok seminar of experts noted that racist ideology is manifested in discriminatory immigration laws and practices which give preference to nationals of some countries while excluding or making difficult the entry of nationals of other countries.

114. Immigrant women, both as dependent and independent migrants, are confronted with a complex system of multiple discrimination. Due to an intricate interaction of racial and gender discrimination in both their own communities and in the host society, women are more negatively affected by inequalities in the economic, political and social spheres than men.[83]

115. In most cases, existing policies and immigration laws clearly support the gender hierarchy in their families and communities, as the legal status of most immigrant women is dependent on the legal status by their husbands or fathers. Even women who are subjected to domestic violence by their husbands are not freed from this dependency and the law forces them to choose between the violence of their husbands or deportation by the national authorities.

116. Racism on the part of the dominant culture makes it much more difficult for minority women to confront gender discrimination within their own communities as the racial

discrimination they encounter in the host country leads to an increased need for identification and solidarity with their own communities. Immigrant communities exert more pressure on women to maintain their traditional roles and to preserve the patriarchal norms as "binding" elements of their community. At the same time, the patriarchal values and traditions of a particular community, imposed by men, often become the elements of racist ideology and, as such, they are turned against women as a gendered form of racism. For example, the picture drawn of foreign women in Europe can be summarized as "backward", "isolated" and "in need of help", a picture which is specific to women only. For women from Muslim communities, it becomes even more difficult to fight such prejudices as all these characteristics are explained as being an integral part of the so-called "Muslim culture", deemed to be the largest obstacle to "integration".[84]

IV. ARMED CONFLICT, RACISM AND RAPE

A. Ethnicity and gender in times of armed conflict

117. In situations of armed conflict, be it international or national in scope, gender becomes a crucial factor in the intersection. This implies a recognition that women and men are affected differently in situations of armed conflict where race/ethnicity/religion play a role, which in turn implies the recognition that the life experiences of women are different from those of men, in both public and private life.[85] Certain forms of racism, racial discrimination, xenophobia and related intolerance may be directed towards women specifically because of their gender, such as sexual violence committed against women of a particular racial, ethnic or religious group during armed conflict, in detention or in refugee camps.

118. During times of armed conflict, women experience violence at the hands of the men of the "enemy" community, as well as soldiers of the "enemy" community. They are most often gang raped in front of family members, their sexual organs mutilated, tattooed or destroyed, they are sometimes stripped and paraded naked, they are made to dance naked in front of enemy soldiers, they are sometimes enslaved and made to cook and clean for the men and soldiers of the other communities and sometimes, as in Rwanda, intimate family members are asked to rape them in public. Finally, after such ordeals, the majority are killed or left to lead a life with these memories.

119. The expert group meeting in Zagreb particularly noted the vulnerability of racialized women to targeted violence in the context of ethnically motivated conflict. Women of discriminated against or persecuted ethnic groups deserve special attention, as they are the fastest growing group of refugees and internally displaced people. Ethnic or race based violence against women might be usefully framed as intentional intersectional subordination in that the racism and sexism manifested in such rape reflects the race or ethnic-based targeting of women for an explicitly gender-based violation. Recent tragedies in Bosnia and Herzegovina, Burundi, Rwanda, and Kosovo sadly illustrate that the long history of ethnically based violence against women has not been relegated to the distant past.[86]

120. The recent wars in Bosnia and Herzegovina, in Rwanda and in Kosovo point to the fact that sexual violence can be a central instrument of terror, especially in campaigns that involve ethnic fratricide or nationalist wars. In addition, rape and sexual violence have been used to

assert dominance over the enemy. Since women's sexuality is seen as being under the protection of the men of the community, its defilement is an act of domination asserting power over the males of the community or group that is under attack.[87] Besides their strategic use during wartime, rape and sexual violence are very often employed as methods of torture in interrogation.

121. In Rwanda and Bosnia and Herzegovina ethnically motivated rape and female mutilation were perpetrated as assaults against both the honour of the other group, through the degradation of their women, and of course against women themselves. Women are particular targets as they are often regarded both as representing the symbolic honour of the culture and being the genetic gatekeepers to the community. The connection between gender and nation has been underlined, as has as the major role played by women in the construction and defence of ethnic and nationalist identity.[88] "Women's honour and the control of their sexuality by the community makes them the reproducers of the boundaries of ethnic and national groups." Their bodies, and their controlled sexuality are instrumental in keeping the boundaries of the community free from pollution and infiltration. It is therefore not unusual that during ethnic conflict, rape and sexual violence become strategies for destroying these boundaries, for assaulting the honour of the community and for defiling women who are entrusted by the community to maintain purity of lineage.

122. The act of rape or sexual violence during ethnic and nationalist conflict is not an isolated, aberrational act. It is extremely purposive and aimed not only at destroying an individual woman but the community's sense of ethnic purity, which many believe is vested in the "honour" of women. Linked to questions of shame and honour are issues of ethnic pollution. The hideous stories of forced pregnancy that have come out of the former Yugoslavia point to the fact that men perceive that women can be defiled. This defilement is based on the fact that a woman's sexuality is the marker of the boundaries of an ethnic group. It is apparent that the community lays great emphasis on ethnic purity. During war, that purity is deliberately assaulted, precisely to strike at the core of ethnic identity.

123. Moreover, women are often used as the markers of ethnic difference. They are the cultural symbols of ethnic worlds. Partha Chatterjee in his pioneering work on women and nationalism draws attention to the fact that during the nationalist phase, men strive to protect the home and the inner sanctum of their homes as the spiritual centre of their nationalism.[89] Women become symbols of this spiritual domain, the caretakers of nationalist and ethnic practices and rituals that keep the identity alive in a visual, coherent sense. In this context, to rape or mutilate women in ethnic conflict is to raid the inner sanctum, the spiritual core of ethnic identity and to defile it. It is not unusual that men, after they rape the women, often tattoo their breasts or genitalia with insignia of the other community. This accentuates the fact that the female body is a symbol of a community's honour and its inner sanctum. To rape women with impunity and to mark their bodies with the symbols of the other side is to assert domination and symbolically to assault ethnic identity in its most protected space.

124. The question of honour raises another dimension. Not only "the other" men but the men of their own communities, often their fathers and brothers, commit violence against women to protect them from their fate. During the Indo-Pakistan partition riots, this was chronicled in detail. Women were killed by their own men's swords, or they were made to swallow poison,

pushed into wells, strangled or burnt alive. This violence was nearly as extensive as the violence by the men of the other community. To take a woman's life to prevent her from experiencing shame and humiliation is an act of saving her honour and giving her martyrdom in the annals of the collective memory. It is not death that the men fear - they do not kill their sons. It is sexual violence and the anticipation of sexual violence that terrifies them. To preserve their community's honour they kill their daughters. This linkage of sexuality and honour, a linkage preserved in the language of even article 27 of the Geneva Convention has killed many women during armed conflict. In addition, the question of honour has forced some women to commit suicide. Many women and girls saved their honour by self-immolation.[90] Another major problem concerns survivor's guilt. Those who did not commit suicide feel that the community has concluded that they gave in to sexual violence to save their lives, that they did not have the sense of honour to take their own lives. This survivor's guilt had paralysed many women and some did end up taking their lives after the war was over.

125. Heroic death is present in ethnic and traditional practices for women. For women in armed conflict who are civilians, heroic death also plays its part. However, what is celebrated is not the murder of the other side but the taking of one's own life instead of facing dishonour. The female suicide killers of the Liberation Tigers of Tamil Eelam are one such example.

126. It is not uncommon for violence against women to be used as part of a politically motivated war strategy to undermine the morale of the persecuted community. Although the assault against the community represented by these abuses has been decried as ethnic genocide, this outrage does not signal any solicitude for victims of this abuse, many of whom are now ostracized as tainted and irredeemably degraded women.

127. It has been shown that in a crisis situation (e.g. a monetary crisis) in countries that are pluralistic in nature, comprising a variety of ethnic and religious groups, and where poverty persists, tensions that may be latent between these groups can easily explode into violent social unrest, in which women of a particular ethnic and/or religious group are singled out, because of their gender, to become victims of sexual violence and mass rape. This type of conflict situation shows clearly the intersection between gender and ethnicity in a particular type of conflict situation, usually referred to as a horizontal conflict situation as it involves different ethnic and/or religious groups.[91]

128. The major issue in these conflict situations is the tenuous inter-ethnic and inter-religious relations manifested in some multi-ethnic and multi-religious societies, often aggravated by the persistence of stereotyping and prejudice and expressed in discriminatory actions by the majority group towards minority groups, thereby generating mutual distrust. In some cases also, the attitude, policies and actions of the authorities, both civil and military, reinforce this mutual distrust and latent hostility between various groups in society. As a consequence, when the latent tensions turn into open conflict, in many cases women, who are exposed to multiple or compound discrimination as they are of a particular racial or ethnic group and at the same time of a particular socio-economic status, often become victims of sexual violence, including rape.[92]

129. The tragic incidents of racially motivated rape are sometimes preceded by another manifestation of intersectional oppression: the propagation of explicitly raced and gendered

propaganda directed against ethnic women in efforts to rationalize sexual aggression against them. This was explicitly deployed in Bosnia and Herzegovina and in Rwanda, as reported by Human Rights Watch reports from both regions.[93]

130. The War in Chechnya is an extreme example of gender and national discrimination. Evidence about the rape of Chechen women by Russian soldiers from time to time emerges in newspapers. Officially, these brutal actions are condemned and viewed as criminal. However, in everyday life, a part of the male population (whether involved in national conflict or not) considers rape as "a natural practice in a war zone" (citation from an interview with a 43-year-old Moscow engineer). Dr. Donna M. Hughes (University of Rhode Island) provided evidence that this barbarian mentality is strong among military men and has terrifying implications in the area of the mass dislocation of soldiers.[94]

131. Rape and other forms of sexual violence were used in Kosovo in 1999 against ethnic Albanian women as weapons of war and instruments of systematic "ethnic cleansing". Acts of rape were not rare and isolated acts committed by individual members of Serbian or Yugoslav forces, but rather were used deliberately as an instrument to terrorize the civilian population, extort money from families and push people to flee their homes. Rape furthered the goal of forcing ethnic Albanians from Kosovo.

B. Vulnerability of refugee women

132. The vulnerability of refugee women to sexual violence constitutes an example of an intersectional problem that should only partially be analysed as ethnic discrimination. As reported by Human Rights Watch,[95] Burundian refugee women in Tanzania report a very high incidence of rape. Their vulnerability to sexual violence is partially structured by gender, in that they are often most vulnerable to abuse when they are undertaking the gender based responsibilities of collecting firewood and other essentials for the home. Under the prevailing conditions of refugee life, honouring this responsibility requires them to travel alone or in small groups several miles from the refugee camps, when they are often assaulted, sometimes because of their identity as powerless refugee women. As Hutus, they are dislocated aliens in a foreign land. Moreover, the conditions that prevail in their camp, particularly the lack of bare essentials for survival, are also products of broader patterns of racial power, in particular the differential resources available to African refugees as opposed to those who are victims of European conflict. Finally, the sexual violence committed against them is both raced and gendered: the specific abuse to which they are subject is obviously based on their gender, while their specific identity as Hutu women renders them particularly vulnerable to racial stereotypes prevalent among Tanzanian men.[96]

C. The past conflict cycle

133. During the post-conflict cycle women are also at a disadvantage. For example, women who have been subjected to sexual violence could experience pregnancy, guilt, community stigma and social ostracism. Remedies for rape and sexual abuse may also be inaccessible for women in some societies because of social or legal barriers. Moreover, in some countries, women who have lost their male relatives or whose husbands are missing may not inherit their property.

134. Women who have been tortured in conflicts are often unable to gain access to medical and legal remedies. Investigations conducted in areas including the former Yugoslavia, northern Uganda, eastern Congo and India have demonstrated that most victims fail to admit they have been raped for fear of being stigmatized by society or rejected by their husbands. Evidence also shows that this fear is well founded: women who have been raped have been unable to find marriage partners and those who were married are often deserted by their husbands.[97]

135. Women in Kosovo (interviewed by Human Rights Watch[98]) appeared to be suffering from very high levels of trauma, exacerbated by cultural taboos associated with rape. Women returning to their families from captivity often exhibited symptoms of trauma and extreme emotional distress. While some women received emotional support from friends and family, other women feared speaking of the assault at all, terrified that they would be blamed for their rape, shunned by friends and family, and unable to marry. Newspaper accounts and testimonies of witnesses and victims across Kosovo referred to the shame that women felt about the rape and sexual torture they had experienced.

136. Women also suffer from the excesses of armed conflict as widows. Since most wars are fought between men, it is inevitable that women become widows overnight. In Rwanda, female headed households rose sharply after the genocide.[99] In southern Sri Lanka, after the JVP insurrection, a rise in the number of female headed households was noted.[100] In fact, widowhood becomes a serious problem in post-war reconstruction. Bhasin and Menon write, "The scale and incidence of widowhood in 1947-1948 (in India) was so immense - as was the related task of resettling refugees - that it resulted in the Indian Government setting up what was to be its first major welfare activity as an independent State: the rehabilitation of what it called 'unattached women'. Never before in the country's experience had a Government, either feudal or colonial, been called upon to shoulder social and economic responsibility for circumstance as problematic as widowhood, ritually inauspicious, socially stigmatized, traditionally shunned."[101] Women suffer enormous economic hardship, as well as trauma as many of them witness the death of their husbands. Many confess that what keeps them going is the future of their children.[102] Unskilled, often sexually harassed and carrying a terrible psychological burden, these women deserve special attention in the work of rehabilitation and reconstruction after war.

D. Legal developments on armed conflict and violence against women at the international criminal tribunals

137. The mechanisms have only recently been created to facilitate the investigation and prosecution of such crimes, through the creation of the ad hoc tribunals for the former Yugoslavia and Rwanda, and more recently the International Criminal Court (ICC).

138. The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have played a critical role in setting jurisprudential benchmarks for the prosecution of wartime sexual violence. The Office of the Prosecutor of the ICTY has recognized that sexual violence not only constitutes a range of international crimes, such as war crimes, crimes against humanity and genocide, but can also constitute torture, enslavement, serious bodily injury and other relevant acts, as long as the elements constituting these crimes are present in the act of sexual violence. To date, ICTY public indictments have been issued for crimes of sexual assault committed during the war in the

former Yugoslavia as grave breaches of the Geneva Conventions, crimes against humanity, war crimes and genocide. Moreover, the ICTY has publicly charged a number of alleged war criminals with command responsibility for crimes of sexual assault under article 7.3 of the Statute. As of December 2000, the International Criminal Tribunal for Rwanda (ICTR) has publicly indicted 45 persons, of which five indictments include charges of sexual violence. Forty-three of the accused are in custody, either on trial, awaiting trial or serving a sentence.

139. Some highlights of the jurisprudence of the international criminal tribunals include:

Rape recognized as torture

140. In the Celebici case,[103] the ICTY characterized the rape of Bosnian Serb women prisoners at the Celebici prison camp as acts of torture. The tribunal found Hazim Delic, a Bosnian Muslim deputy camp commander, guilty of a grave breach of the Geneva Conventions (torture) and of war crimes (torture) for the act of rape he committed. Zdravko Mucic, the Bosnian Croat camp commander, was found to have command responsibility for crimes committed at Celebici, including crimes of sexual assault. The landmark decision underscored that rape inflicts the severe physical and psychological pain and suffering that characterizes torture. The trial chamber emphasized that when such violence is committed against a woman because she is a woman, in addition to rape because of a woman's ethnicity, the perpetrator's intent triggers the prohibited purpose of gender discrimination as an element of the crime of torture.

Rape recognized as a crime against humanity

141. In the Akayesu decision,[104] the ICTR found the defendant guilty of crimes against humanity based on evidence that he had witnessed and encouraged rapes of Tutsi women while he was a communal leader. The tribunal found that the rapes were both systematic and carried out on a massive scale.

142. In the Tadic case,[105] the ICTY heard extensive testimony on the rape and sexual assault committed in the Omarska and Trnopolje prison camps against Bosnian Croat and Bosnian Muslim women. Tadic, a Bosnian Serb low-level official at the notorious Omarska camp, was not convicted for directly committing an act of sexual assault, but for his participation in a general, widespread and systematic campaign of terror that included beatings, torture, sexual assaults and other physical and psychological abuse directed at the non-Serb population in the Prijedor region. It is particularly significant that in the Tadic case the Tribunal found the accused guilty of crimes against humanity for criminal acts of persecution that included crimes of sexual violence. The Tadic decision states categorically that rape and sexual violence can be considered constituent elements of a widespread or systematic campaign of terror against a civilian population. It is not necessary to prove that rape itself was widespread or systematic but that rape was one of perhaps many types of crimes - committed on a widespread or systematic basis and comprising an aggressor's campaign of terror.[106]

Rape prosecuted as genocide

143. In the Akayesu case, the ICTR found Jean-Paul Akayesu guilty of genocide. The Tribunal's decision was based in part on evidence that he had witnessed and encouraged rape and sexual mutilation of women in the course of a genocidal campaign against the Tutsi population while he was a communal leader. In the Musema case, the court found that the evidence presented - considering both the murders and acts of serious bodily and mental harm, including rape and other forms of sexual violence - amounted to genocide.[107]

Rape recognized as a violation of the laws or customs of war

144. In the Furundzija decision,[108] the ICTY found Anto Furundzija, a local Bosnian Croat military commander, guilty of aiding and abetting a war crime, the rape of a Bosnian Muslim woman. Furundzija was found to have provided "assistance, encouragement, or moral support which ha[d] a substantial effect on the perpetration of the crime" when his subordinate orally, anally and vaginally raped a Bosnian Muslim woman Furundzija was interrogating.

Command responsibility for rape

145. In the Celebici decision, the ICTY found Zdravko Mucic guilty on the basis of command responsibility for the violations of international humanitarian law committed by guards at the camp. The Tribunal stated, "The crimes committed in the Celebici prison camp were so frequent and notorious that there is no way that Mr. Mucic could not have known or heard about them". Those crimes included rape and sexual assault committed by Mucic's subordinates.

Rape prosecuted as a war crime in internal armed conflict

146. The Akayesu case charged the defendant with rape as a war crime during Rwanda's civil war. Akayesu was acquitted of this charge as the prosecution did not sufficiently establish that he was a member of the armed forces or was charged with military duties. Most recently the prosecutors of the ICTR have moved to add rape as a war crime to the charges against Alfred Musema.

Recognition of forced pregnancy as a potential crime

147. In dicta in the Akayesu decision, the ICTR described a situation in which a rapist might deliberately impregnate his victim with the intent to force her to give birth to a child who would, because of patrilineal social conventions, not belong to its mother's group. The tribunal noted that such an act might be a constitutive element of genocide.

148. The Rome Statute makes explicit that rape and other gender violence are among the most serious crimes of concern to the international community by specifically defining them as constituent acts of crimes against humanity and war crimes. According to the Statute, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other forms of sexual violence also constituting a grave breach of the Geneva Conventions (in international armed conflict: art. 8.2 (b) (xxii)) or constituting a serious violation of article 3 common to the four Geneva Conventions (in a non-international conflict: art. 8.2 (e) (vi)) are war crimes.

Similarly, the Statute defines crimes against humanity as including torture, as well as "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" (art. 7.1 (g)) when "committed as part of a widespread or systematic attack directed against any civilian population" (art. 7.1). Furthermore, the Statute defines "enslavement" as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children" (art. 7.2 (c)). The Statute also provides that persecution on the basis of gender - as well as on political, racial, national, ethnic, cultural, religious or other grounds - may constitute a crime against humanity (art. 7.1 (h)). Although the Statute does not make specific reference to rape or other sexual violence in its article on genocide, its provision can be used to prosecute rape and other sexual violence. The Statute provides that constituent acts of genocide include "causing serious bodily or mental harm to members of the group" and "imposing measures intended to prevent births within the group" (art. 6 (b) and (d)).

149. The Special Rapporteur welcomed the decision of the International Criminal Tribunal for the former Yugoslavia (ICTY) to convict Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic for rape, torture and enslavement. The decision was announced on 22 February 2001 in The Hague. The three received sentences of 28, 20 and 12 years respectively. The Foca trial, which opened in March 2000, focused entirely on sexual crimes against women and heard the testimonies of 25 victims. The three Bosnian Serb men were found guilty of rape, classified as a crime against humanity and a war crime, of Bosniac (Bosnian Muslim) women and girls - some as young as 12 and 15 years of age, in Foca, eastern Bosnia and Herzegovina. Two of the accused were also found guilty of sexual enslavement as a crime against humanity by holding women and girls captive in a number of de facto detention centres in and around Foca. Many victims subsequently "disappeared". The Tribunal found that enslavement of the women did not necessarily require the buying or selling of a human being. This decision sets a legal standard for sexual enslavement as a crime against humanity.

V. HEALTH, RACE AND GENDER

150. At the International Conference on Population and Development, held in Cairo in 1994, the international community affirmed the importance of the right to reproductive health and self-determination. As defined and recognized by Governments, reproductive health entails that people have the ability to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this definition is "the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth".[109] Grave violations of women's reproductive rights can derive from practices that themselves constitute violence against women, such as domestic violence, rape, female genital mutilation, early marriages, sex-selective abortions, female infanticide and trafficking and forced prostitution.[110]

151. Moreover, in many countries, health status among population groups and women themselves varies by race and ethnicity, indicating differential access to health care services, information and education necessary for health protection. For that reason, in its General

Recommendation 24 on women and health,[111] the Committee on the Elimination of Discrimination against Women (CEDAW) urged that special attention be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities.

A. Access to adequate health

152. Gender discrimination frequently interacts with other forms of discrimination, including racial discrimination, to deny racialized women their right to health. A variety of factors, including racial discrimination, neo-colonialism and poverty, prevent women of disadvantaged racial groups from having access to adequate health care.[112]

153. In many countries, the majority of them developing countries, women from certain racially disadvantaged groups experience disproportionately high rates of HIV/AIDS. CEDAW the first human rights treaty body to incorporate HIV/AIDS formally into its work, highlighted, in its General Recommendation 15 on the avoidance of discrimination against women in national strategies for the prevention and control of AIDS, the link between women's reproductive role, their subordinate social position and their increased vulnerability to HIV infection.[113] For example, African women experience disproportionately high rates of HIV/AIDS, which often goes untreated, in part owing to the unequal global distribution of health care resources. African women's experiences with HIV/AIDS require specific gender-related attention because many women cannot protect themselves from the disease when they cannot control their birth control methods and their partners' sexual activities.

154. Women not only have the heavier burden in terms of HIV/AIDS infection, but they may also be stigmatized and blamed for HIV. Indeed, because of the stigma and blame, some men choose younger women and teenagers for sexual relationships to prevent, in their mind, the spread of infection. Furthermore, some cultural and religious practices, trafficking and poverty, among other factors, also increase women's vulnerability to infection.[114]

155. In his report on his mission to the United States the Special Rapporteur on racism identified statistical disparities based on race and gender regarding AIDS and diabetes, among other things. The Special Rapporteur concluded: "Patterns of race and sex discrimination persist in the health care delivery system, from the exclusion of women of colour from important clinical drug trials to their under-representation in the preventive health care system."[115] In the report on her mission to South Africa, the Special Rapporteur on violence against women pointed out that HIV positive indicators there are 5.55 per cent for black women and .052 per cent for white women.[116]

156. The privatization of health care in industrialized countries limits access to health care for minority women. This problem is compounded by restrictions on public funding for reproductive health care for women. Furthermore, access to health care for women of particular racial groups may also be adversely affected by social norms that restrict women's freedom of movement.

157. Gender and racial bias in the medical system and in medical practices also afflict minority women. Medical studies that fail to disaggregate data according to race and gender, or do not examine the specific health issues affecting women of colour, can overlook medical problems specific to certain women.[117]

B. Forced sterilization and other coercive measures

158. Forced sterilization and other coercive measures involving reproductive health have also targeted women of particular racial groups.[118] For example, Roma women in Europe have been subjected to involuntary gynaecological examinations.

159. Population policies may be informed by racial considerations or stereotypes which encourage women to reduce or increase their birth rates (in the global South and in minority communities in the global North). Women from particular ethnic or racial groups may be coerced to use contraceptive methods, including sterilization. They may also be coerced into multiple pregnancies in order to ensure survival of the group. In India, for example, economic coercion was used to encourage Indian women to undergo sterilization procedures. In the United States, African American, Latina and Native American women have been the targets of sterilization campaigns and selective drug screening and prosecution during pregnancy.[119]

160. In his report on his mission to Brazil the Special Rapporteur on racism[120] reported that allegedly more black women are sterilized than white women. Some commentators believe that this method of contraception or family planning contributes to the gradual whitening of Brazil's population. A communication from Deputy Domingos Dutra, referring to a study by the demographer E. Berquo, at a working meeting with the Congressional Commission on Human Rights, 8 June 1995: According to data provided by the Brazilian Geographical and Statistical Institute for 1986, in the State of Bahia, 75 per cent of women who had been sterilized (aged between 15 and 40) were black or of mixed parentage, while for the country as a whole the rate is estimated to be 61.8 per cent. The following information was provided by the Women's Municipal Council of Salvador da Bahia at a meeting on 12 June 1995.

> "These women, who are often poor, naturally do not wish to have any more children because they are unable to provide them with a decent standard of living, but they are not offered any alternative means of contraception; they may even be sterilized without their knowledge when they give birth. They are also encouraged to accept sterilization by politicians who promise to help them if they are elected. Material incentives (money, food) to accept sterilization, are offered also and until 1995 employers could demand a medical certificate certifying that female workers had been sterilized.[121]

161. In its Concluding Observations on the report of China, the Committee on the Elimination of Discrimination against Women highlighted the issue of reproductive health provision for indigenous women: "Notwithstanding the Government's clear rejection of coercive measures, there are consistent reports of abuse and violence by local family planning officials. These include forced sterilizations and abortions, arbitrary detention and house demolitions, particularly in rural areas and among ethnic minorities."[122]

162. Moreover, women of disadvantaged racial groups have been encouraged to participate in the use of experimental reproductive technology, such as nuroplant and Depo Provera. For example, when HIV-positive Haitian refugees were detained at the United States naval base in Guantanamo Bay, Cuba in 1993, doctors administered Depo Provera to female detainees and (mis)informed them that the birth control drug would help cure their AIDS.[123]

163. It has also been reported that population control technologies have been nearly exclusively developed and tested on poor women of colour in the global South, in South Africa for example, before being approved and sold in Western markets.[124] Some policy planners reportedly advocated a requirement that low-income women receive Norplant rods as a precondition for their continuing to receive public assistance. While Norplant was eventually marketed to many women, the decision to "compel" the use of Norplant by low-income women highlights the manner in which low-income women and women of colour have often been on the front lines of using controversial drugs or procedures.[125]

C. Racial differentials in maternal and infant mortality

164. There are also racial differentials in maternal and infant mortality rates, with indigenous women in some countries experiencing higher maternal mortality than women of other groups. For example, indigenous women in Peru experience maternal mortality rates twice as high as the general population. In the United States, Latina women are twice as likely as white women to die in childbirth; African American women are four times as likely to die in childbirth.[126] The average infant mortality rate of 80 per 1,000 in Guatemala jumps to 160 per 1,000 in the highland Indian areas.[127] The Special Rapporteur on violence against women in the report following her mission to South Africa, reports that while maternal mortality is 2.6 per 100,000 births for Black women, it is only .003 per 100,000 births for white women.[128]

165. Statistics often show disparity in the risk of maternal death between majority and minority populations. In Australia, for instance, the aboriginal population is at up to 10 times greater risk of maternal death than the non-aboriginal population. Differences for these populations exist even in the same cities, as in the United States, where the black population has a relative risk of maternal death 4.3 times higher than the non-black population. A report on maternal deaths in Suriname also suggests a correlation between ethnic origin and rates of maternal mortality. Higher rates can result from the fact that ethnically marginalized groups have poorer socio-economic status than mainstream communities and less access to necessary health care.[129]

166. For indigenous women whose communities have been the targets of genocide and mass extinction, health issues are linked to racial discrimination. For instance, high rates of alcoholism among Native American communities in the United States can in part be traced to longstanding patterns of neglect and of racial discrimination against Native Americans. As a result, women and girls in such communities suffer from disproportionately high rates of foetal alcohol syndrome.[130]

D. Unique reproductive health challenges facing irregular migrants

167. Particular emphasis needs to be put on the health of irregular migrants, who are generally considered to be particularly vulnerable to human rights abuses as they are often subject to exclusionary policies, stigmatizing attitudes and discriminatory practices. The determinants of poor access to health care for migrants include legal status, socio-economic status, cultural background, gender, age and various factors directly related to the migration process.

Irregular migration

168. Trafficked women may be exposed to higher risks to HIV transmission and other reproductive and sexual problems than commercial sex workers owing to their confined and controlled situation and vulnerability to abuse, including violent rape.[131] In addition, trafficked women often have no access to health services and treatment for sexually transmitted infections (STIs) owing to lack of financial resources, fear of discovery, use of inappropriate health-care providers and so on. For instance, almost all trafficked women under International Organization for Migration (IOM) Sarajevo's auspices who agreed to undergo STI testing had at least one type of STI. Other reproductive health risks to which trafficked women and girls are subject are unwanted pregnancies, unsafe abortions, pelvic inflammatory disease, infertility and potential cervical cancer.[132]

169. In its Concluding Observations on the report of India, the Committee on the Elimination of Discrimination against Women highlighted the health consequences of violence against women and girls, including traditional practices and trafficking: "The Committee is concerned that women and girls are exploited in prostitution and inter-State and cross-border trafficking. It is also concerned that those women are exposed to HIV/AIDS and health risks and that existing legislation encourages mandatory testing and isolation."[133] [134]

VI. CHALLENGES; BEST PRACTICES; RECOMMENDATIONS FOR ACTION

A. The need to develop an intersectional methodology

170. There is a need to develop an intersectional methodology, named by some experts as a "protocol", to identify intersectional discrimination and its effect on women and girls. Additionally, this methodology should be designed to uncover ways in which various structures of subordination converge to the disadvantage of women and girls in both public and private life, and should also establish legal instruments for remedies and redress.

171. It is important to recognize that prevailing conventions and laws have sometimes been narrowly interpreted to capture only discrimination or disempowerment that occurs along a single axis of power and that such cramped interpretations contravene the explicit scope of conventions, laws and declarations which are intended to protect individuals from race and gender-based denial of rights. Thus, to the extent that the International Convention on the Elimination of All Forms of Racial Discrimination is intended to protect individuals from race discrimination, the rights protected therein encompass all aspects of race discrimination, including those aspects that affect women and men differently. The same interpretation applies

to gender discrimination: the rights guaranteed by the Convention on the Elimination of All Forms of Discrimination against Women encompass the full range of race-related experiences of gender discrimination.

172. While no additional articulation of basic principles is necessary to create rights and protections against intersectional discrimination, it would be useful to develop interpretive protocols to break existing interpretations and practices that diminish the rights of victims of intersectional subordination.

B. Challenges

173. The protocol suggested above can constitute an effective intervention against intersectional subordination if it is planted in fertile ground. There are, however, some dilemmas - some of them quite substantial - that will complicate even the most ambitious attempts to expand the scope of human rights activities to address the rights of both women and men subject to intersectional subordination.[135]

Race or ethnicity is not a constant marker around the world

174. The ability to explicate the intersections of subordination rests in turn on the ability to conceptualize with some clarity the function of ethno-racial hierarchies and other group-based practices. While it is clear that all societies are delineated to varying degrees by gender, the question of race or related divisions is sometimes difficult to establish firmly. While there are certain features of racial stratification that are unique to post-apartheid societies, nonetheless the history and practice of group differentiation is sufficiently widespread as to render the differences between countries merely differences of degree rather than of kind. Moreover, with the increasing fluidity of movement across international borders, no society can truly claim homogeneity. Thus, no society is immune from racism or related intolerance; consequently the imperative of attending to the interaction of racism or related intolerance with sexism still stands.

The unequal development of race and gender human rights discourses

175. Another important difference between race and gender discourses that may complicate efforts to attend to intersectional subordination is that the level of organization and institutionalization of gender-based human rights practice is more advanced than that of race. While there are several institutions and international NGOs dedicated to protecting women's human rights, the number of similar institutions under the race rubric is comparatively limited. "Clearly race and related hierarchies are not the same as gender, but given the level of racial inequality in the world, and the manner in which race, like gender, can dramatically shape the enjoyment of rights and guarantees on the ground, race conscious analysis should be incorporated squarely into the work of United Nations institutions."[136]

Addressing the North/South divide

176. Some of the intersectional vulnerabilities discussed herein are in part the consequence of the North/South divide. This may limit the extent to which these issues can be addressed within a human rights framework that attends primarily to relationships within States.

The complex role of racialized elites

177. The political or economic subordination of some nations in the international arena can sometimes contribute to the denial of internal racial divisions, which in turn complicates efforts to ground an intersectional analysis.

The discourses of nationalisms and racial solidarity

178. The politics of racial solidarity or nationalism form unique obstacles to addressing the well-being of racially identified women around the world. Grounded in the defence of race or nation, anti-feminist rhetoric sometimes places women in the untenable position of having to choose between their own identities as women and their identities as members of marginalized nations or racial groups. Intersectional analysis may help reframe the interests of women as co-extensive with the interests of the race or nation and consequently suppress the demands that racialized women take sides against themselves.

C. Examples of best practices for tackling the intersectional subordination of women based on race and gender

The role of national institutions

179. National institutions, including human rights commissions and ombudspersons, can play a vital role in ensuring compliance with national and international standards and norms, and in combating racism and racial discrimination.

180. Ombudspersons and national human rights institutions are efficient institutions for sensitizing public opinion and have important educational functions. National institutions generally should work to protect the rights of minorities and migrants; they should provide legal assistance to victims of racial discrimination and should monitor the implementation of anti-discrimination legislation by Governments. It is important for national institutions to keep their independence and that they should be accessible to victims of racism.

181. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should therefore encourage States to establish independent national human rights institutions with adequate resources to carry out their functions. States should also be encouraged to establish special institutions or to provide human rights institutions with a special mandate to combat racism and racial discrimination.

182. National institutions should monitor the implementation of national legislation prohibiting racial discrimination and report to Parliament. Legislation should give national institutions the role of applying alternative methods of resolving disputes, through the use of conciliation and mediation and, where necessary, of representing victims in the courts or before other bodies.

183. National institutions should undertake educational programmes to raise public awareness of racism and to disseminate information on the regional and international remedies available to

victims of racial discrimination. Training should also be provided to judges and law enforcement officers concerning applicable international human rights instruments relating to racism and gender; that training should include guidance on the practical implementation of such provisions in their daily work.

184. The distinction between the national institution and the courts should be clear and, accordingly the institution should issue recommendations as opposed to judgements. It should, however, be able to initiate inquiries and compel cooperation and assistance as necessary.

185. The members of the institution must be representative of the population which they serve and they must be allowed to determine their own priorities. The institution must be impartial and independent, with safeguards to protect both its credibility and its independence. It must have a broad mandate that allows for effective action, as well as adequate resources to carry out its work.

186. At the seminar of experts held in Geneva (February 2000), Mr. Jenö Kaltenbach presented a paper[137] on the action of national institutions in Eastern Europe. He particularly stated that political representation and ethnic autonomy were both fundamental questions. The best solution from the perspective of minorities was the provision in legislation of guaranteed mandates for minority parties. He cited the case of Slovenia where, despite the small number of people belonging to the Italian and the Hungarian minorities, both communities had a guaranteed mandate. Romania was also cited as a good example; there, each of the 15 ethnic groups had a guaranteed mandate. In Croatia they were seven guaranteed minority mandates. In Poland, minorities did not have a guaranteed mandate, but the representation of minorities was provided for through preferential conditions in elections, providing an exemption from the minimum vote requirement imposed on other parties for entry into Parliament. He indicated that in other States in Eastern Europe, there was no preferential system at all, but the composition of the population ensured that minority groups were represented.[138]

Examples from the Special Rapporteur's report on the mission to the United States of America on the issue of violence against women in the State and federal prisons, and the San Francisco local implementation of the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination[139]

187. The Special Rapporteur cites in her report, that "one of the major factors determining whether a woman is sent to jail is her race". Recommendations have been made to the Government by the Special Rapporteur to take specific steps to remedy the violation based on gender, race and class discrimination.

188. As a result of the passing of local legislation to implement the Convention on the Elimination of All Forms of Discrimination against Women in San Francisco, California, United States of America, the city's juvenile probation department was obligated to undergo a gender analysis to examine how to create the conditions necessary for young women of colour to

exercise their rights within the justice system. The recommendations made by the Special Rapporteur in her report were adopted and have been implemented to address the needs of young women of colour by providing them with access to training in personal development, reading and empowerment.

189. Furthermore, as a way to address the systemic discrimination faced by all women, a strategy to implement the Convention on the Elimination of All Forms of Discrimination against Women on a local level was developed. The implementation requires all city departments to undergo a gender/race analysis in three areas:

Employment (which includes, hiring, pay equity, promotions and appointments to city commissions);

Programmes that have an impact on women directly and indirectly;

Allocation of resources (operational and service budgets).

190. The recommendations are being implemented (with measurable outcomes) in order to integrate gender into all aspects of the city government. The implementation is monitored and documented by a task force made up of city officials and NGOs.

191. Some of the outcomes are as follows. The first woman of colour was appointed to the city's Air Port Commission; the Department of Public Works which is responsible for providing street lighting is now required to provide additional lighting to poor communities where poor women of colour use public transportation. In order to accommodate employing women in non-traditional positions the Public Works Department agreed to offer day care and job training; more women of colour have now applied for such positions than ever before. The Juvenile Probation Department hired a young women's advocate to audit the current programmes and reconfigured its budget allocations to address the training and educational needs of young women. The city's budget office has agreed to undergo training on how to develop a gender/race sensitive budget.

192. To strengthen the existing legislation on the Convention on the Elimination of All Forms of Discrimination against Women the city is now in the process of adopting legislation on the International Convention on the Elimination of All Forms of Racial Discrimination. The city is shielded from the negative California statewide legislation against affirmative action as it can provide data through the analysis on how women and men face systemic discrimination based on race and gender, and private companies that sign contracts with the city are now questioned regarding their employment practices.

Programme relating to the European Union Framework Strategy on Gender Equality (2001-2005)

193. The Community Framework Strategy on Gender Equality and the programme related to it cover the enforcement of the human rights of women. The programme has as one of its five interrelated areas of intervention gender equality in civil life relating to human rights and fundamental freedoms for both women and men, regardless of race or ethnic origin, religion or

belief. The European Commission will pay attention to and support awareness raising actions aimed at empowering in particular women facing multiple discrimination, such as migrant women and women from ethnic minorities. The programme will fund actions promoting recognition of the human rights of women and enforcing equal opportunity rights, and will strengthen the fight against gender related violence and trafficking in women.

Structures for survivors of exploitative migration and trafficking

194. States, with the support of NGOs, should establish support structures for survivors of exploitative migration and trafficking both in the country of destination and in the country of origin, such as shelters, skills training, access to legal and health services, and the possibility of acquiring visa extensions.[140]

195. One example of such an initiative[141] is that of Pag-Asa (Belgium). In July 1994, the Government of Belgium issued a circular granting temporary residence permits to trafficked women. It was one of the recommendations made following a parliamentary inquiry on trafficking and permits trafficked women to stay for up to 45 days. This period is to allow women time to decide if they want to lodge an official complaint. If they decide to take the matter further, they can be granted a permit to stay for a further three months. If prosecution is successful, women can be granted a permanent residence permit, but this also depends on their level of integration into Belgian society.

196. Pag-Asa is one of three organizations that were established with government financial aid in 1994 to help trafficked women. The others are Payoke in Antwerp and Suriya in Liege. Pag-Asa receives referrals from the police, groups working with refugees and the social services. In 1997 it dealt with 104 cases; 75 of these concerned women, 13 men and 4 minors. Trafficked women are mostly from the Philippines, Eastern and Central Europe, and some African countries. Pag-Asa also deals with cases of trafficking in illegal labour, especially in the textile industry, and abused domestic workers employed by diplomats. Pag-Asa also informs the general public about the situation of trafficked women, works with non-governmental organizations on issues of common concern and lobbies institutions on the impact of various policies.

197. Pag-Asa's objective is to rehabilitate trafficked women to help them to deal with the trauma of their experiences, cope with everyday life and build a new life, either in Belgium or back in their countries of origin. Pag-Asa also raises awareness, in both Belgium and in the countries of origin, on the impact of trafficking on women.

Innovative elements

Providing practical and emotional support to women victims of trafficking;

Making visible the situation of trafficked women;

Helping women through legal proceedings.

Action undertaken

Personal counselling: Pag-Asa aims to support and motivate women to take control of their own lives. It explores with women the different options to identify where they have the best chance of starting a new life. This includes a discussion on which type of training, including language skills, would be best suited to their needs.

Return to the countries of origin: in Eastern and Central Europe, Pag-Asa has links with non-governmental organizations to help trafficked women. In other countries, where this is not the case, Pag-Asa will approach the relevant embassies to try to find support for the women.

Preventive work in countries of origin: part of the problem in arresting the growth of trafficking is to break the myth about Western Europe being a paradise; this is why preventive work is so important. With this strategy in mind, Pag-Asa has made links with some embassies, for example with the Philippine embassy, to try to raise awareness on the situation of women who have been trafficked. Pag-Asa encourages women who have been successfully rehabilitated to help others by speaking out about their experiences and by talking to women who may be afraid or ashamed. In Poland and Ukraine, some women have agreed to do radio programmes to warn others about the dangers of accepting jobs in Western Europe.

Legal support: Pag-Asa contacts lawyers, accompanies women to the police station to give statements and provides interpretation, if necessary.

Sheltered accommodation: Pag-Asa has a shelter (at a secret address) for up to 10 to 12 women. Here, women receive support and are encouraged to assert their independence. Women can stay in the shelter for up to a maximum of one year. Pag-Asa also has two "transit apartments" for women making the transition from sheltered accommodation to independent living and women can stay there for up to a maximum of one year. Pag-Asa encourages all women to take assertiveness training courses to increase their confidence and self-esteem.

198. Another example of an initiative for women is that of the Arbeitgemeinchaft gegen Internationale Sexuelle und Rassistische Ausbeutung (Agisra) - Köln (Workshop on International Racism and Sexual Violence and Exploitation - Cologne). Agisra aims to support and help women confronted with various problems such as lack of residence status; threat of deportation; isolation; physical and psychological disorders; debts; threats and violence from traffickers, pimps, clients and husbands. The goal of Agisra is also to increase migrant women's self-awareness and to help them to organize themselves autonomously.

Innovative elements

Making visible violence against migrant women;

Providing legal advice, guidance and support for women throughout legal hearings and trials;

Providing advice and support to women wishing to return to their countries of origin.

Action undertaken:

Agisra carries out the following services and activities:

Advice and information (this can be by telephone or face-to-face);

Psycho-social guidance and aid in acute crisis situations;

Accompanying women to the offices of various authorities such as the employment, youth, immigration, housing and social service authorities, lawyers, doctors and the police;

Accompanying women witnesses to legal hearings and trials;

Providing interpretation at hearings and interviews with the police;

Visiting women who are in hospital or prison.

Safe house: women often need emergency accommodation and since women's shelters are usually full, Agisra has a subsidized apartment in which two women can be housed anonymously.

Return to countries of origin: if a woman has to or wants to return to her country of origin, Agisra will provide her with information about "places to land" and women's projects in that country or, if available, information about integration programmes for returning migrants.

Raising awareness on violence against migrant women: meetings with representatives of the police and public authorities, journalists and social services are organized to exchange information and experiences. These meetings usually cover the following topics: background and effects of migration on migrant women in Germany; reasons for and types of migration; structures of the international trade in women and sex tourism; rights of immigrant women; refugee policy and its impact.

Networking: Agisra is linked to a large number of networks, projects, organizations and initiatives at regional, national and international level. For example:

Advisory offices combating trade in human beings;

Neighbourhood health centres Coloured Women's Network in Cologne;

Düsseldorf North Rhine-Westphalia Network (women's advice centre);

Mona Bochum, an advice service for migrant women;

La Strada;

Member of the working group against the criminalization of women migrants;

Member of the North Rhine-Westphalia working group on developing advisory services for women;

National Women's Network;

"No one is illegal" campaign for migrants without papers;

Member of the European Network against Trafficking in Women.

Resources: Agisra receives funds to pay its rent (two small offices and a subsidized apartment) and telephone costs from the City of Cologne's specific funds for self-help groups. Two (3/4 time) posts are financed by the Landschaftsverband Rheinland (the Farming Association of Rheinland). Agisra must file a financial statement with the Court of Auditors of the Home Affairs Ministry of North Rhine-Westphalia each year.

D. Recommendations for action

199. Although advances have been made in addressing the intersectionality of gender and racial discrimination, a more structured approach is needed to eliminate the multiple forms of discrimination experienced by women. Urgent action needs to be taken at both the national and international levels to raise awareness of the multiple nature of discrimination experienced by marginalized women and to mainstream an intersectional or more holistic approach to the question of racial and gender discrimination. It is the intersectional, simultaneous nature of multiple discrimination that needs to be understood at a theoretical level and addressed at a practical level.

200. It was recalled at the Zagreb expert group meeting that the primary responsibility for the promotion and protection of human rights rests with the State. Indeed, under the relevant discrimination treaties, State Parties are required to enact legislation to address race and gender discrimination. The following recommendations to improve the protection available to marginalized women are therefore principally addressed to States. However, the international community also has a fundamental role to play in improving the situation of racially discriminated women. The United Nations and other international organizations, for example, have an important function in raising awareness of the issues facing women from racially disadvantaged groups and providing assistance to States in implementing policy changes to

ensure that the human rights of all persons are protected. Proposals are therefore also put forward to improve the international response to the protection of women who are discriminated against on racial grounds.

201. The recommendations set out below are aimed at encouraging Governments to take positive action to identify and address how multiple discrimination affects marginalized women. Many of the recommendations for addressing intersectional discrimination are also outlined in the report of the expert group meeting.

1. General recommendations at the national level

202. States should:

(a) Integrate a gender perspective in policies and actions to combat racism, with a view to empowering women belonging to vulnerable groups to claim respect for their rights in all spheres of public and private life.

(b) Develop, evaluate and implement strategies aimed at the elimination of gender-based racial discrimination. States should collect, compile and disseminate data according to race and gender. Data are often collected only according to the racial characteristics of a population or only on the basis of gender, leaving racial discrimination against women unnoticed. Reporting States should be encouraged by treaty bodies to collect the data necessary to determine the extent to which marginalized women are subject to intersectional subordination. Multilateral organizations, governmental entities, and NGOs should disaggregate all information, particularly statistical data, collected on the racial or ethnic characteristics of a particular population additionally according to gender. Information should be gathered on the intersection of race and gender, focusing on issues that are particularly relevant to women of disadvantaged racial groups. Sources of information and expertise should include United Nations treaty bodies and specialized agencies, as well as relevant intergovernmental and non-governmental organizations.

(c) Integrate an intersectional analysis. Attention should be given to addressing the intersection of gender and race in the drafting and revision of national legislation and policies. Attention to the role of race or its closely related analogues is necessary in part to ensure that gender mainstreaming is itself fully inclusive of the range of gender experiences. States should strive to integrate a gender perspective into all programmes of action and policies aimed at combating racism, racial discrimination, xenophobia and related intolerance. Similarly, race considerations need to be taken into account when adopting measures to eliminate gender discrimination. States should review all governmental policies and laws, including those on citizenship, nationality and immigration, for their impact on the elimination of all forms of discrimination and the achievement of gender equality, with particular reference to marginalized women. States should establish and/or strengthen legislation and regulations against all forms of racism, including its gender-specific manifestations.

(d) Develop the capacity of marginalized women to participate fully and equally in decision-making and policy development. The full scope of intersectional marginality will only be integrated into women human rights discourse when racially subordinated women around the

world have full access to human rights institutions. Currently, many racialized women gain access to such institutions through more elite women's groups. Sometimes these institutions are based in their own countries, but often they are located outside. Funding for self-organized groups to participate in and influence human rights discourse should be made available to such women.

(e) Adopt practices which provide vulnerable women, such as women refugees, women migrants, trafficked women, female domestic workers and other marginalized women, with sufficient protection. States are urged to accede to or ratify all international agreements addressing the elimination of all forms of discrimination. To improve the situation of women in the labour market, States should also ensure the implementation of the International Labour Organization conventions on equal treatment and non-discrimination in the field of labour standards and social security. Additionally, domestic work ought to be included in the formal labour laws of States, so that domestic workers, the majority of whom are women, are afforded social security and other benefits that are available to other women, and protection from abuse.

(f) Review national mechanisms to determine the possibility for women to seek protection and remedies against intersectional subordination based on race and gender. The relevant treaties on discrimination require signatories to enact national legislation to address both race and gender discrimination. To the extent that the national mechanisms of signatories cannot address these intersectional problems, marginalized women cannot receive the full protection to which they are entitled. States that do not provide remedies for intersectional discrimination are therefore not fully compliant with their obligations. To correct this gap, it is essential not only for gender to be mainstreamed into the reporting and review of countries in the context of the Committee on the Elimination of Racial Discrimination, it is also essential that race be similarly incorporated in the workings of all United Nations bodies and institutions, including the Committee on the Elimination of Discrimination against Women (CEDAW), the Division for the Advancement of Women (DAW) and the Commission on the Status of Women.

(g) Provide full access for women within minority communities to transparent and effective prosecutorial machinery to seek redress for violations of international human rights law.

(h) Develop training and awareness programmes for personnel of the legal, welfare, health, education and other statutory bodies designed to address the specific problems created by the multicultural approach to domestic violence and other forms of gender-related abuse experienced by minority or marginalized women. Governments should employ gender-inclusive and gender-specific language. "Terminology should characterize gender-specific abuses as accurately as possible."[142] All officials examining the problem of racial discrimination should receive training in recognition of women's human rights.

(i) Develop special training programmes to eliminate any racist and sexist stereotypes and prejudice among officials and staff most frequently in contact with marginalized women, such as labour officials, teachers, health professionals, immigration authorities, policemen, judges and other law enforcement officials. It is essential to provide financial and

other resources for anti-racist and gender-sensitive training for the judiciary, the police and relevant governmental officials and personnel to increase their sensitivity to racial discrimination in a gender-specific manner.

(j) Encourage educational institutions to adopt policies of equal opportunities, and monitor their implementation with the participation of teachers, parents and boys and girls, and establish measures to address the interaction between racist and sexist prejudice and stereotypes. It is imperative that human rights education be part of the school curricula so that people are taught from an early age the value of diversity and respect for difference.

(k) Ensure priority and adequate funding for NGOs that work specifically with marginalized women. Although many women belonging to disadvantaged groups do not have decision-making power through traditional channels, their participation in NGOs and grass-roots movements has enabled them to place their concerns on national, regional and international agendas. Increased communication and the provision of resources and training to support women's NGOs' monitoring and documentation of violations should occur.

2. Recommendations to Governments on specific issues

203. With respect to immigration and refugee laws and policies at the international, regional and national levels, Governments should:

Review and repeal of all legislation and policies on immigration that result in any form of discrimination against immigrant women;

Provide full access for women within immigration communities to transparent, open and effective investigative and prosecutorial machinery to seek redress for violations of international human rights law;

Provide immigrant women and women who have no legal immigration status with full and equal access to all the resources and preventive measures against violence available to other women in decision-making, in particular at the local level;

Ensure priority and adequate funding for NGOs that work specifically with immigrant women at the international, regional and national levels.

204. In the light of the increasing rate of female incarceration, especially among marginalized groups of women, Governments should:

Increase resources for education and training of incarcerated marginalized women;

Ensure the protection of fundamental rights of incarcerated marginalized women, including reproductive rights, hygiene, access to legal advice and services, and the right to have dependent children join them;

Urge States which have not yet done so to ratify or accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), so that it may quickly enter into force.

205. The risk of discrimination on multiple grounds such as race, ethnicity, gender and class has increased with the feminization of migration. Governments should:

Educate migrant women about their rights and ensure their access to all means of redress against all types of discrimination in all spheres of public and private life;

Ensure respect for the social and economic rights of women migrant workers, including those working in the informal sector and domestic workers, on matters such as pay, annual and maternity leave, social security and protection;

Provide and ensure access to education and training, as well as to income-generating activities, for migrant women;

Promote sustained measures to ensure that migrant women who have been victims of gender-based crimes, such as rape and other forms of violence, including domestic violence, forced prostitution and trafficking, are granted adequate legal protection and support;

Design health policies and training programmes for health care professionals to promote understanding and respect for different cultural backgrounds and personal experiences relating to health, disease, sexuality, pregnancy and childbirth; educate and train health care professionals to deal with the specific health needs of migrant women;

Elaborate and implement policies and programmes that guarantee the full enjoyment of all human rights for all indigenous and tribal people, with special focus to the specific needs of indigenous and tribal women.

206. With regard to trafficking issues, Governments should:

Design and implement policies and measures to criminalize trafficking, punish traffickers and empower trafficked persons to regain control over their lives, including through special protection measures for women who wish to escape from traffickers (such as sheltered housing and special residence permits) and social inclusion programmes providing access to training and employment opportunities;

Design anti-trafficking campaigns in such a way as to avoid negative stereotyping of marginalized women and the dissemination of sexist/racist prejudice;

Take special measures to ensure that every woman is registered and issued with legal identity documents to reduce the incidence of statelessness and trafficking; this preventive measure would protect individuals and allow them access to available legal procedures and remedies and development opportunities;

Encourage the business sector, in particular the tourist industry and Internet providers, to develop codes of conduct with a view to protecting trafficked persons, especially those in prostitution, against gender-based and racial discrimination, and to promoting their rights, dignity and security; States should encourage the establishment of independent civil society committees to monitor compliance with such codes of conduct;

Involve civil society organizations in awareness-raising and in the monitoring, evaluation and implementation of governmental policies and programmes.

207. Concerning health-care practices, Governments should:

Give special attention to the health needs and rights, including the right to sexual and reproductive health, of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, women in prostitution and indigenous women;

Design health policies and training programmes for health care officials, to promote understanding and respect for different cultural backgrounds and personal experiences relating to health, sexuality, pregnancy and childbirth, so that racist stereotypes and prejudices can be eliminated;

Ensure that adequate protection and health services, including trauma treatment and counselling, are provided for women in especially difficult circumstances;

Ensure without prejudice and discrimination the right to sexual and reproductive health information, education and services for all women and girls, including those who are not legally resident in the country.

3. At the international level

208. The United Nations system should:

(a) Develop new methodologies, reporting procedures and evaluating tools to identify and address the effects of multiple forms of discrimination, including gender and racial discrimination;

(b) Address the intersection of gender and race in the design and implementation of policies and programmes of the United Nations system in social, economic, political and other domains;

(c) Ensure the development of systems that allow for the collection of data disaggregated by race as well as sex;

(d) Mainstream an intersectional analysis of various forms of discrimination, including racial and gender discrimination, into the design and implementation of policies and programmes of the United Nations system in social, economic and political domains;

(e) Carry out an internal audit in order to determine the allocation of financial and human resources for development and implementation of specific policies and programmes to address the issues of intersectional discrimination, including such factors as age, race, ethnicity, disability and gender;

(f) Develop programmes and policies to sensitize and raise awareness among United Nations officials concerning the issue of the intersection of gender and race discrimination and its impact on women and girls, as well as the magnitude of the problem.

209. The Security Council should:

(a) Ensure the effective implementation of its resolution 1325 (2000) on women in armed conflict, with particular attention to women from marginalized groups;

(b) Include representation of marginalized women, such as indigenous women, Roma women and Dalit women, in peace negotiations, as well as in negotiations regarding conflict and post-conflict resolution.

210. The human rights treaty bodies should call for a substantive analysis of violations occurring at the intersection of gender and race.

211. CEDAW and CERD should increase information sharing and cross-referencing, and consider joint consultations and producing joint recommendations.

212. The Division for the Advancement of Women should organize a consultation with members of each of the United Nations treaty bodies to discuss methods of intersectional analysis of various forms of discrimination.

213. Each complaint submitted under international human rights treaties should be examined to reveal the extent and scope of racial and gender discrimination, and treaty bodies considering such complaints should ensure that suggested remedies for violations integrate a race and gender perspective.

214. Treaty bodies and other human rights institutions should recommend the collection of data disaggregated by sex and race to determine the extent to which women are subject to intersectional discrimination.

215. The Committee on the Elimination of Racial Discrimination should ensure that a gender perspective is incorporated in its work under its early warning and urgent action procedures and in its general recommendations.

216. The special rapporteurs and other non-conventional human rights mechanisms should analyse the patterns of violations of human rights taking into consideration the intersection of gender and racial discrimination.

217. The human rights treaty bodies should develop general recommendations that address how women and girls experience discrimination based on race, gender and other identities.

Notes

[1] Ruth Manorama, "Gender and racism: caste based discrimination in South Asia (on the basis of descent, occupation, human rights violation)", EGM/GRD/2000/EP.1.

[2] For example, see the case of Victoriana Vázquez Sánchez, a 50-year-old member of the Mixteca indigenous community of Barrio Nuevo San José, Guerrero state, Mexico. She was reportedly raped by Mexican soldiers in April 1999. With another woman relative, she had left the community to look for a young man and a boy from their family who had gone to harvest crops and had not returned. The two women were allegedly captured and raped by soldiers near their plots of land. The bodies of their two relatives were found more than two weeks later. Cited in Amnesty International, "Broken bodies, shattered minds: torture and ill-treatment of women", 6 March 2001.

[3] For example, in the Devadasi system Dalit young girls dedicated to gods are later pushed into prostitution.

[4] See European Women's Lobby, "Combating racism and gender discrimination in the European Union", March 2001; J.F. Healey, *Race, Ethnicity, Gender and Class*, 1995.

[5] Report of the Secretary-General on the implementation of the outcome of the Fourth World Conference on Women, A/51/322, paras. 7-14.

[6] McDougall and van Boven, proposed general recommendation on gender related dimensions of racial discrimination, Committee on the Elimination of Racial Discrimination (August 1999).

[7] Beijing Platform for Action (A/CONF.177/20, chap. I, resolution 1) adopted at the Fourth World Conference on Women, 4-15 September 1995, Beijing.

[8] Gay McDougall, "The implementation of human rights with regard to women", presentation before the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, August 1999.

[9] The combined effects of gender and racial discrimination on the advancement of women have also been considered in the context of several meetings hosted by entities of the United Nations system, including expert group meetings convened by the Division for the Advancement of Women, such as that on refugee women and children in 1990 and on gender-based persecution in 1997. A series of United Nations World Conferences on Women (the first in International Women's Year 1975, followed by the 1980 World Conference on Women in Copenhagen and the 1985 World Conference on Women in Nairobi) provided the framework for the development of a three-part theme concerning the advancement of women: Equality, Development and Peace. Although these Conferences addressed discrimination on the grounds of sex within the broad topic of "equality" none addressed the intersection of this discrimination with other forms of discrimination against women. Nonetheless, these issues were taken up tangentially in the recommendations made by these Conferences with regard to "vulnerable groups of women" perceived as including refugee, minority, indigenous and migrant women. In 1993, the General Assembly adopted the Declaration on the Elimination of Violence against Women,

which in its preamble draws attention to the especial vulnerability of women belonging to minority groups, refugee women and migrant women to violence. (See Division for the Advancement of Women, "Gender and racial discrimination". Background paper for the Expert Group Meeting on Gender and Racial Discrimination, 21-24 November 2000, Zagreb, Croatia.)

[10] Rome Statute of the International Criminal Court, article 5 (defining genocide, crimes against humanity and war crimes as violations of international law), (A/CONF.183/9, 17 July 1998).

[11] International Tribunal for Rwanda, Decision of 2 September 1998, Prosecutor v. Jean Paul Akayesu, Case No. ICTR-96-4-T.

[12] Security Council resolution 1325 (2000) on women and peace and security, 31 October 2000.

[13] See also Inter-American Commission on Human Rights, Report on the human rights situation in Brazil: Report on the status of women in the Americas, 1998. See also Commission on Human Rights resolution 2000/23 on the situation of human rights in Myanmar.

[14] General Assembly resolution 53/132 of 9 December 1998, paragraph 36; Sub-Commission on the Promotion and Protection of Human Rights resolution 1999/6 of 25 August 1999, preamble and paragraph 16 (i); Economic and Social Council resolution 1999/12 of 27 July 1999, paragraph 9; and Commission on Human Rights resolution 1999/78 of 28 April 1999, paragraph 67.

[15] For example, see concluding observations of the Committee on the Elimination of Racial Discrimination on the reports of: United Kingdom of Great Britain and Northern Ireland (CERD/C/304/Add.9); The former Yugoslav Republic of Macedonia (A/51/18, para. 239) (A/52/18, para. 521 (educational participation by Albanian girls in rural areas)); Japan (CERD/C/58/Misc.17/Rev.3); Colombia (CERD/C/304/Add.76); Kuwait (A/48/18, paras. 376, 380); United Arab Emirates (A/50/18, paras. 566, 570); Zimbabwe (A/51/18, para. 93); Namibia (A/51/18, para. 497 (personal status law)); Uruguay (CERD/C/304/Add.78, para. 10: (Women belonging to the Afro-Uruguayan community who are victims of double discrimination on grounds of both their gender and race)).

[16] CERD Recommendation XXVII on discrimination against Roma (A/55/118, Annex V, C.).

[17] CERD Recommendation XXV on gender related dimensions of racial discrimination (A/55, Annex V, A.).

[18] Revision of CERD Reporting Guidelines with particular reference to article 5, adopted at its fifty-fifth session, 26 August 1999, CERD/C/55/Misc.3/Rev.3.

[19] See concluding observations of the Committee on the Elimination of Discrimination against Women on the reports of: India (A/55/38, para. 68); Germany (A/55/38, paras. 317-318); China (A/54/38, paras. 294, 299(b) and 306).

[20] D. Sullivan, "Trends in the integration of women's human rights and gender analysis in the activities of the special mechanisms" in Gender Integration into the Human Rights System, Report of the Workshop, 26 to 28 May 1999, OHCHR, DAW, UNIFEM, E/CN.4/2000/INFORMAL/3.

[21] Asia-Pacific Seminar of Experts in Preparation for the World Conference against Racism: Migrants and Trafficking in Persons with Particular Reference to Women and Children, 5-7 September 2000, Bangkok, Thailand.

[22] Gender and Racial Discrimination, Report of the Expert Group Meeting, 21-24 November 2000, Zagreb, Croatia, United Nations Division for the Advancement of Women (DAW), Office of the High Commissioner for Human Rights (OHCHR) United Nations Development Fund for Women (UNIFEM).

[23] K. W. Crenshaw, "Gender-related aspects of race discrimination", Background paper for Expert Meeting on Gender and Racial Discrimination, 21-24 November 2000, Zagreb, Croatia (EM/GRD/2000/WP.1). See also Kimberlé Crenshaw, *Mapping the Margins. Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991); Kimberlé Crenshaw, *Race, Gender, and Sexual Harassment*, 65 So. Cal. L. Rev. 1467 (1992).

[24] Idem.

[25] See CERD Recommendation XXV, para. 2, note 17.

[26] Pragna Patel, "Notes on gender and racial discrimination: an urgent need to integrate an intersectional perspective to the examination and development of policies, strategies and remedies for gender and racial equality", Background paper - Panel on "Gender and all forms of discrimination, in particular racism, racial discrimination, xenophobia and related intolerance", Commission on the Status of Women, forty-fifth session (6-16 March 2001).

[27] See Crenshaw, note 22.

[28] Idem.

[29] Statement of by the United Nations High Commissioner for Human Rights, Expert Group Meeting on Gender and Racial Discrimination, Zagreb, 21-24 November 2000.

[30] Most of the following is based on information which has been modified to include both race and gender, and which is contained in "Report of the Expert Group Meeting on the Development of Guidelines for the Integration of Gender Perspectives into United Nations Human Rights Activities and Programmes", E/CN.4/1996/105, annex (20 November 1995) and "Integration of women's human rights into the work of the special rapporteurs", E/CN.4/1997/131, annex. The Commission on Human Rights has recognized the need to develop practical strategies to implement the recommendations contained in the report of the Expert Group Meeting on the Development of Guidelines for the Integration of a Gender Perspective into Human Rights Activities and Programmes. See Commission on Human

Rights resolution 1997/43, para. 7; 1998/51, para. 9. The Commission on Human Rights has also welcomed the paper entitled "Integration of Women's Human Rights into the Work of the Special Rapporteurs" prepared by UNIFEM for the meeting of the special rapporteurs, special representatives, independent experts and chairpersons of the working groups of the special procedures of the Commission on Human Rights. See Commission on Human Rights resolution 1997/43, para. 5; and 1998/51, para. 8.

[31] Committee on the Elimination of Racial Discrimination, General Recommendation on gender dimensions of racial discrimination: Commentary and background information, 11 March 1999, fifty-fourth session, 1-19 March 1999.

[32] Marsha J. Darling, "Distributive justice issues and the construction of State interest re: women of colour", EGM/GRD/2000/EP.7 ; see also Marsha J. Darling, "The State: friend or foe?: Distributive justice Issues and African American women", in Jael Silliman and Ynestra King, Eds., *Dangerous Intersections: Feminist Perspectives on Population, Environment, and Development*, Cambridge, M.A., South End Press, 1999.

[33] See legal framework: report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rhadika Coomaraswamy, on the mission to South Africa on the issue of rape in the community, 11-18 October 1996, E/CN.4/1997/47/Add.3, Section III, Legal framework.

[34] Pragna Patel, "Domestic violence, racism and the politics of multi-culturalism: the importance of managing intersectionality in struggles for women's equality", EGM/GRD/2000/EP.4.

[35] Demonstration based on casework undertaken by Southall Black Sisters (SBS), an autonomous, advisory, advocacy and campaigning organization for black, (predominantly) South Asian women, based in west London, United Kingdom.

[36] See Darling, note 32.

[37] See Crenshaw, note 23.

[38] See note 22.

[39] Lawyer's Committee for Civil Rights, "Voices of African American Women in the United States of America: the unkept promises of the Platform for Action".

[40] Kimberlé Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics", 1989 U. Chi. Legal F. 139.

[41] See also Nicoleta Bitu, "Double discrimination of Roma women", EGM/GRD/2000/EP.6; report of the Special Rapporteur on violence against women on the mission to Brazil 1997, note 33.

[42] National Commission for Women, Annual Report for 1995-96 .

[43] Amnesty International, "India - the battle against fear and discrimination. The impact of violence against women in Uttar Pradesh and Rajasthan", 8 May 2001 (AI index: ASA/20/016/2001).

[44] Report of the Committee on the Elimination of Discrimination against Women, *Official Records of the General Assembly, Fifty-fifth session, Supplement No. 38* (A/55/38), Part I, paras. 68 and 74 (report of India).

[45] National Commission for Women, Annual Report for 1992-93, chapter II, page 42.

[46] See Amnesty International report, note 43. Facts based on this report.

[47] Idem. See also the cases of Gangawati, Mohini Devi, Maya Devi.

[48] Idem. See the case of Ramvathi.

[49] Cases highlighted in Amnesty International report, note 43.

[50] See the case in Amnesty International, "Pakistan - insufficient protection of religious minorities", 15 May 2001 (AI index: ASA 33/008/2001).

[51] Another illustration is the intersection of race and class with gender as it affects South African women who experience violence and seek State redress. See the report of the Special Rapporteur on violence against women, E/CN.4/1997/47/Add.3: "The prevalence of violence against women in South Africa varies from region to region, between urban and rural and between black and white communities. In the Northern Cape, with a vast and widespread coloured population, the increased general violence, the breakdown of families, and the low status of women in society severely increase women's vulnerability to violence and abuse" (para. 14). "... the appalling lack of resources, personnel and sensitivity in the black townships with regard to the crime of rape was deeply disturbing" (para. 15). "It is considered that, within the framework of serious under-reporting, black women are the most reluctant to report rape to the police. This reluctance is understandable since the police confirmed that it has only recently become possible for black women to have access to police services, and since there is general public mistrust of the police force because of its history under the previous regime" (para. 31). "Only 5 per cent of plaintiffs are white" (para. 47). See also Adrien K. Wing and Eunice P. de Carvalho, *Black South African Women: Towards Equal Rights*, 8 Harvard Human Rights Journal, 57-100 (1995); Nozipho January-Bardill, "Race gender intersections: CERD and South African experiences", EGM/GRD/2000/EP.12 ; Human Rights Watch, "South Africa - the State response to domestic violence and rape", November 1995.

[52] See "The Bellagio Consultation": Report of the Consultation on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance held in Bellagio, Italy, 24-28 January 2000, A/CONF.189/PC.1/10.

[53] See European Women's Lobby report, note 4.

[54] See report of the Zagreb meeting (note 22), section III.F.

[55] Report of the Special Rapporteur on violence against women, E/CN.4/2000/68, para. 54.

[56] For example, the Rohingya women, in northern Arakan State, Myanmar, have been rendered stateless by the fact that Myanmar denies the Rohingya citizenship. Owing to their undocumented status, they are unable to move freely across borders. For this reason, the Rohingya rely on facilitated migration. The women, in particular, become victims of traffickers who prey on their predicament. Ibid., para. 55.

[57] Marina Malysheva, "Gender and national/race discrimination in global and regional context: NIS countries", EGM/GRD/2000/EP.3.

[58] See "Bellagio Consultation", note 52.

[59] See note 21.

[60] Mely G. Tan, "Gender and all forms of discrimination, in particular racism, racial discrimination, xenophobia and related intolerance", Background paper - Panel on "Gender and all forms of discrimination, in particular racism, racial discrimination, xenophobia and related intolerance" Commission on the Status of Women, forty-fifth session (6-16 March 2001).

[61] OMCT (Organisation mondiale contre la torture), *Violence Against Women - A Report*, June 1999, p.175.

[62] See Report of the Special Rapporteur on violence against women, E/CN.4/1996/53. See also Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Kuwait from 17 to 27 November 1996, E/CN.4/1997/71/Add.2.

[63] See Concluding Observations of the Committee on the Elimination of Racial Discrimination on the report of the United Kingdom of Great Britain and Northern Ireland, (or A/51/18, para. 239): "Concern is also expressed about the 'two-week rule', which prohibits foreign workers from seeking employment or remaining in Hong Kong more than two weeks after the expiration of their employment contracts. In view of the fact that the overwhelming majority of the persons affected by this rule are female Filipino foreign domestic workers, this rule appears to have discriminatory aspects under the terms of the Convention, which may leave workers vulnerable to abusive employers."; and on the reports of Kuwait, and the United Arab Emirates (see note 15).

[64] Human Rights Watch, Middle East Watch, "Punishing the victims, rape and mistreatments of Asian maids in Kuwait", August 1992.

[65] See OMCT Report, note 61.

[66] Amnesty International, *Broken Bodies, Shattered Minds: Torture and Ill Treatment of Women*, 6 March 2001, p. 36.

[67] Amnesty International, "Saudi Arabia: Gross human rights abuses against women" (AI Index; MDE 23/57/00).

[68] Babel Uhl, "Racial discrimination and violence against migrant women: traffic in women in Europe from the perspective of NGOs", EGM/GRD/2000/EP.2.

[69] See OMCT report, note 61.

[70] See Report of the Latin America and Caribbean Regional Seminar of Experts on Economic, Social and Legal Measures to Combat Racism, with Particular Reference to Vulnerable Groups, Santiago, Chile, 25-27 October 2000, A/CONF.189/PC.2/5, para. 62: "Special attention should be paid to the multiple discrimination inflicted on Afro-Americans on grounds of gender, sexual orientation, physical disability and health status. The combination of racial and gender discrimination results in increased vulnerability for women of African descent, many of whom are subjected to sexual exploitation and trafficking"; see also Report of the Special Rapporteur on violence against women, E/CN.4/2001/73/Add.2, para. 20: "members of lower castes and ethnic minorities appear to be disproportionately represented in the sex worker population".

[71] Amnesty International, "Unsung heroines: the women of Myanmar", 24 May 2001.

[72] Ruth Manorama, "Gender and racism from caste discrimination in South Asia", EGM/GRD/2000/EP.1.

[73] Ibid.

[74] Ibid. "The Devadasi system forces 5,000 to 15,000 girls to be secretly auctioned every year in the commercial sex market."

[75] See Report of the Special Rapporteur on violence against women, on trafficking in women, women's migration and trafficking in women, E/CN.4/2000/68; Seminar Bangkok, note 20, para. 3 "legal avenue".

[76] See report of the Zagreb meeting (see note 22), sect. III.C.

[77] Regional Seminar of Experts on the Protection of Minorities and other Vulnerable Groups and Strengthening Human Rights Capacity at the National Level, 5-7 July 2000, Warsaw, Poland, A/CONF.189/PC.2/2; see also Uhl, note 68.

[78] Report of the Expert Seminar on Remedies Available to the Victims of Acts of Racism, Racial Discrimination, Xenophobia and Related Intolerance and on Good National Practices in this Field, 16-18 February 2000, Geneva, Switzerland, A/CONF.189/PC.1/8, annex.

[79] See Report of the Special Rapporteur on violence against women, E/CN.4/2000/68, para. 66: "Undocumented immigrants may be subjected to custodial violence. Cases of custodial rape and other forms of sexual violence against undocumented immigrant women detained for deportation have been reported. Due to their double marginalization, undocumented immigrant sex workers are particularly vulnerable to rape and other forms of sexual violence and sexual misconduct."

[80] OSCE and ODIHR, "Trafficking in human beings: implications for the OSCE", Review Conference, September 1999, ODIHR Background paper 1999/3.

[81] See OMCT report, note 61.

[82] See European Women's Lobby report, note 4.

[83] Pinar Ikkaracan, "Racism, gender and immigrant women", EGM/GRD/2000/EP.5.

[84] See the so-called "one year rule" in the United Kingdom and its effect on domestic violence because of their vulnerability, in P. Patel, note 33.

[85] See Tan, note 60.

[86] Reports of the Special Rapporteur on violence against women: E/CN.4/1998/54/Add.1, Rwanda; E/CN.4/2001/73, sect. V.F, Kosovo; sect. V.G, India.

[87] Sexual aggression has long been regarded as an act of domination in anthropological literature. Susan Brownmiller's *Against Our Will* chronicles in detail the use of rape as an act of domination since pre-historic times - not only domination against women but also against the men who are expected to protect them. Susan Brownmiller, *Against Our Will, Men, Women and Rape*, New York, Simon and Schuster, 1975.

[88] Nira Yuval Davis, *Gender and Nation*, Sage, 1997.

[89] Partha Chatterjee, "The nationalist resolution of the women's question", in K. Sangari and others, *Recasting Women: Essays in Colonial History*, New Delhi, Kali for Women, 1989, p. 233

[90] Radhika Coomaraswamy, "*A question of honour: women, ethnicity and armed conflict*". Lecture delivered at the Third Minority Lecture on 25 May 1999 at Hotel Intercontinental, Geneva, Switzerland.

[91] Report of the Special Rapporteur on violence against women, E/CN.4/1999/68/Add.3, Mission to Indonesia (rape of members of the ethnic Chinese minority); The Women's Development and Information Unit, *Tamil Women and Children, Living and Dying Under Sri Lankan Army Occupation: Sexual Violence*, 1998, p. 32.

[92] See Tan, note 60.

[93] Human Rights Watch, "Federal Republic of Yugoslavia: Kosovo: Rape as a Weapon of 'Ethnic Cleansing'", March 2000.

[94] See Malysheva, note 57.

[95] Human Rights Watch, "Seeking protection: addressing sexual and domestic violence in Tanzania's refugee camps", October 2000.

[96] See Convention on the Prevention and Punishment of the Crime of Genocide, article I (establishing genocide as a "crime under international law"); Convention Relating to the Status of Refugees, 189 U.N.T.S. 137 (28 July 1951) (guaranteeing rights of refugees); Universal Declaration of Human Rights, article 6 ("everyone has the right to recognition everywhere as a person before the law"), article 14.1 ("everyone has the right to freedom of movement and residence within the borders of each State"); International Covenant on Civil and Political Rights, article 16 ("everyone shall have the right to recognition everywhere as a person before the law").

[97] See Amnesty International report, note 66.

[98] See Human Rights Watch report, note 93.

[99] Report of the Special Rapporteur on violence against women, on policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women, E/CN.4/1999/68/Add.4.

[100] Sepali Kottegoda, "Female headed households in situation of armed conflict", in Nivedini, vol., No.2, p.10.

[101] K.Bhasin and R. Menon, *Borders and Boundaries*, Kali, New Delhi p.58.

[102] Gameeela Samarasinghe, *Living in Conflict Zones, Past and Present: Women and Psychological Suffering*, SSA, 1998, p.149.

[103] *Prosecutor v. Delalic*, et al., Case No. IT-96-21-A, 16 November 1998.

[104] *Prosecutor v Jean Paul Akayesu*, Case No. ICTR-96-4-T.

[105] *Prosecutor v. Tadic*, Judgement, 7 May 1997.

[106] See also the Musema case: with regard to sexual violence, the court stated: "acts of rape and sexual violence were an integral part of the plan conceived to destroy the Tutsi group. Such acts targeted Tutsi women, in particular, and specifically contributed to their destruction and therefore that of the Tutsi group as such." Significantly, the court also found that "the Accused had knowledge of a widespread or systematic attack on the civilian population. The Chamber finds that the rape of Nyiramusugi by the Accused was consistent with the pattern of this attack

and formed a part of this attack", and therefore found Musema guilty of crime against humanity (rape). Musema was sentenced to life imprisonment.

[107] *Prosecutor v. Musema*, Case No. ICTR-96-13-I, 27 January 2000.

[108] *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Judgement, 10 December 1998.

[109] Programme of Action of the International Conference on Population and Development, Cairo, 5-13 September 1994 (United Nations publication, Sales No. E.95.XIII.18) para. 7.2.

[110] See E/CN.4/1999/68/Add.4, paras.6-12.

[111] Women and health, CEDAW Recommendation XXIV (General Comments), A/54/38/Rev.1, chapter I.A.

[112] See CEDAW, Concluding Observations on the report of New Zealand, A/53/38/Rev.1, paras.243-291; para. 279 reads: "The Committee is concerned that the situation of Maori women remained unsatisfactory in many areas, including in respect to the high percentage of Maori girls leaving school early, higher-than-average teenage pregnancy rates, the continuing low number of Maori women in tertiary education, their employment situation, their absence from the judiciary and political decision-making, their health situation and access to health services and higher-than-average incidences of domestic violence."

[113] Avoidance of discrimination against women in national strategies for the prevention and control of AIDS, CEDAW Recommendation XV (General Comments), 2 February 1990, contained in document A/45/38.

[114] "The HIV/AIDS pandemic and its implications", Report of the Expert Group Meeting, 13-17 November 2000, Windhoek, Namibia, DAW, World Health Organization (WHO), Joint United Nations Programme on HIV/AIDS (UNAIDS), Section III.A, EGM/HIV-AIDS/2000/Rep.1.

[115] Report of the Special Rapporteur on racism on his mission to the United States of America, E/CN.4/1995/78/Add. 1, paras. 39, 41 and 87.

[116] Report of the Special Rapporteur on violence against women on the mission to South Africa on the issue of rape in the community, 11-18 October 1996, E/CN.4/1997/47/Add.3, para. 8.

[117] See Deborah L. Shelton, "Closing the gap between white and minority health", *Star Ledger*, 25 January 2000. For instance, medical researchers in the United States cannot explain why black women are more likely than white women to die from breast cancer, even though black women develop the disease at lower rates.

[118] See Report of the Special Rapporteur on violence against women on policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women, E/CN.4/1999/68/Add.4, especially paras. 52 and 55.

[119] United Nations Development Fund for Women (UNIFEM), "Integrating gender into the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance", background paper for the Expert Group Meeting on "Gender and Racial Discrimination", 21-24 November 2000, Zagreb.

[120] Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Maurice Glélé-Ahanhanzo on his mission to Brazil from 6-17 June 1995, E/CN.4/1996/72/Add.1.

[121] Ibid, paras. 53-54.

[122] See also World Health Organization, Advancing Safe Motherhood through Human Rights, 2001 (WHO/RHR/01.5): "Racial discrimination against women of ethnic or racial groupings manifests itself because of their reproductive capacities. It has been reported that some indigenous women in Mexico do not seek delivery care from particular health clinics for fear of being sterilized during delivery." (p. 57); see also Yamin, A.E. and others, Physicians for Human Rights, Health Care Held Hostage: Violations of Human Rights and Medical Neutrality in Chiapas, Mexico, 1999. Cited in Yamin, A.E. and Maine, D.P. "Maternal mortality as a human rights issue: measuring compliance with international treaty obligations, *Human Rights Quarterly, 1999*, 21: 563-607, p. 599.

[123] See Cathy Powell. "Life at Guantanamo: the wrongful detention of Haitian refugees", *Reconstruction*, vol. 2, No. 2, 58, 64 (1993); see also Darling, note 32: "For example, it is very well known that most of the reproductive technologies developed in the 20th century exist largely because poor women of colour in global South countries and African American women in the United States were used to test devices, implant procedures or drugs."

[124] See Darling, note 32.

[125] World Health Organization, *Consideration for Formulating Reproductive Health Laws*, 2nd Edition, 2000 (WHO/RHR/00.1).

[126] Sheryl Gay Stolberg, "Study finds gap in death rates related to childbirth", *Chicago Tribune*, 18 June 1999.

[127] Susanne Jonas, *The Battle for Guatemala: Rebels, Death Squads, and US Power* 179, Boulder, Westview, 1991.

[128] Report of the Special Rapporteur on violence against women, its causes and consequences on the mission to South Africa on the issue of rape in the community, 11-18 October 1996, E/CN.4/1997/47/Add.3, para. 8.

[129] See WHO report, note 122, p. 56; see also Mungra, A., *Confidential Enquiries into Maternal Deaths in Suriname*, The Netherlands, Pasmans Offsetdrukkerij bv, Den Haag, 1999, p. 112.

[130] See UNIFEM background paper, note 119, para. 33.

[131] OSCE and ODIHR, "Trafficking in human beings: implications for the OSCE". Review Conference, September 1999. ODIHR Background paper 1999/3.

[132] International Organization for Migration, Nancy Peroff. "HIV and reproductive health risks to trafficked women in the sex industry. IOM medical programme for Bosnia and Herzegovina", March 2001 (in draft); see also UNAIDS/IOM. *Migrants' Right to Health*. Geneva, Switzerland, March 2001.

[133] See CEDAW Concluding Observations on the report of India, A/55/38, para. 76.

[134] See also CEDAW Concluding Observations on the reports of Indonesia, 1998 "The Committee is concerned that not enough is being done to address the issue of prostitution and trafficking in women as envisaged in article 6 of the Convention. It is also concerned that not enough is being done to assist these women through socio-economic and health programmes and that preventive measures and re-socialization efforts are aimed principally at prostitutes and do not address male clients"; Jordan, 2000; Namibia, 1997; Egypt, 2001; Nepal, 1999; Thailand, 1999.

[135] As highlighted by Professor K. Crenshaw, see note 23.

[136] Crenshaw, note 23.

[137] HR/GVA/WCR/SEM.1/2000/BP.6, "Action of national institutions against racism: examples of good practices in Eastern Europe", background paper prepared by Mr. Jenö Kaltenbach.

[138] Ibid., para. 76; see also HR/GVA/WCR/SEM.1/2000/BP.7, "Action of national institutions: examples of good practices", background paper prepared by Mr. N. Barney Pityana; HR/GVA/WCR/SEM.1/2000/BP.8, "The Discrimination Ombudsman in Sweden", background paper prepared by Mr. Frank Orton.

[139] Krishanti Dhamaraj, "Strategies for Creating Remedies Using Rights Based Approach", EGM/GRD/2000/EP.10.

[140] See Bangkok Seminar, note 21.

[141] European Women's Lobby, "Overcoming discrimination - Selected strategies empowering black, ethnic minority and migrant women".

[142] United Nations Development Fund for Women, *Integration of Women's Human Rights into the Work of the Special Rapporteurs*, UNIFEM, 1998, para. 23.

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